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**Vol. II**  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1939**

**No. 482**

**EDWARD SHELDON AND MARGARET AYER  
BARNES, PETITIONERS,**

**VS.**

**METRO-GOLDWYN PICTURES CORPORATION,  
METRO-GOLDWYN-MAYER DISTRIBUTING  
CORPORATION, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT**

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**PETITION FOR CERTIORARI FILED OCTOBER 25, 1939.**

**CERTIORARI GRANTED DECEMBER 4, 1939.**

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\* Exhibits 19 to 19-E constitute the amended account of Metro-Goldwyn-Mayer Distributing Corporation.

**MICRO CARD**

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COMPLAINANTS' EXHIBITS:

B-4, B-11, B-13, B-27, B-29, B-37, B-39, and B-43—Manager's reports as to certain theatres listed on Defendants' Exhibit L-6, covering weekly operation during period when "Letty Lynton" was exhibited, marked in evidence at folio 1527....	917 to 924
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Statement as to Testimony and Exhibits printed in the Proceedings before Accounting (hereinafter for brevity referred to as P. P. R.) and reoffered in evidence in the Accounting Proceedings before the Special Master.

(Each reference to the prior printed record whether to testimony or exhibits has been given, at the request of the Special Master, a separate reference number, and in the case of exhibits from the prior printed record, separate exhibit numbers, R-1, R-2, etc., have been super-added.)

Reference No. 1—Testimony of Margaret Ayer Barnes (actually incorporated in this record) ..... 631

Reference No. 2—Letter of April 15, 1931 and agreement of April 17, 1931 in relation to purchase of motion picture rights of play "Dishonored Lady" (P. P. R. "Complainants' Exhibit 8", pp. 788-803; marked herein Defendants' Exhibit R-1) ... 635

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Reference No. 4—"Trial of Madeleine Smith" (Book) (Defendants' Exhibit E of original record, marked herein Defendants' Exhibit R-2; not printed as part of either record, but will be handed up on the argument) ..... 639

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### Statement as to Exhibits.

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For the convenience of the Court we herewith set forth an excerpt from the preliminary portion of the Special Master's report which explains the designations given to the exhibits.

"It may be noted here that Complainants' Exhibits are in one series, with alphabetical designations A to M, both inclusive, with addition of arabic numerals where exhibits consist of more than one sheet, and that the Defendants' Exhibits are in four series; first, those introduced in New York in connection with general accounting marked simply with arabic numerals 1 to 34, with addition of letters and numbers where exhibits consist of more than one sheet; second, those introduced in Culver City, California, in connection with general accounting marked with arabic numerals prefaced by letter "C", C-1 to C-34; third, those introduced in connection with the accounting on behalf of the defendant Loew's Incorporated, marked L-1 to L-15, inclusive, and fourth, there were references to testimony and to exhibits which either appear in the printed record of the case in the United States Circuit Court of Appeals, or were submitted (unprinted) to that Court as a part of that record. All such references either to testimony or to exhibits are numbered consecutively References 1-18, inclusive, and in the case of exhibits introduced from such printed record, there were superadded exhibit numbers R-1 to R-7, inclusive."

2288

2289

Only such exhibits as are deemed by the parties necessary to a decision of the questions arising on the appeal have been printed as a part of this record.

## Defendants' Exhibit 6.

"LETTY LYNTON"

## Percentage Retained By Foreign Distributors

2290	Country	1932-1933		1933-1934		1934-1935		1935-1936	
		Foreign	Regular	Foreign	Regular	Foreign	Regular	Foreign	Regular
	Argentina	25	25*	30	30*	30	30*	30	30
	Australia		40*		40*		40*		40
	Austria	35	35	40*	40	40*	40	40*	40
	Belgium	15*	25	15*	25	25*	25	25*	25
	British West Indies		25		25*		45*		40
	Brazil	15	30*	15	30*	15	30*	15	30
	Bulgaria	30	40	35	35	40	40	40	40
	Chile	30	30*	30	30*	30	30*	30	30
	China		30*		30*		30*		30
	Colombia	35	35*	35	35*	35	35*	45	45
	Cuba	35	35*	35	35*	40	40*	40	40
	Czecho-Slovakia	35	35	35	35	35	35	60	60
	Denmark	35	35*	35	35*	35	35	35	35
	Dutch East Indies		35*		35*		45*		45
2291	Egypt	15	40	25*	25*	25*	25*	25	25
	Estonia					40	40	40	40
	Finland	35*	35*	40*	40*	40	40*	40	40*
	France	35*	35	40*	40	60*	60	60*	60
	Germany	40*	40	50*	50	50*	50	50	50
	Great Britain		35*		35*		35*		35*
	Greece	40	40	35*	35*	30*	30*	30*	30*
	Guatemala	35	35*	35*	35*	35*	35*	40	40
	Holland	15*	35*	30*	30	30*	30	35	35
	Hungary	35*	35*	35*	35*	35	35*	35	35*
	India		30*		30*		30*		30*
	Italy	15*	38*	35*	35	36½*	36½*	35*	35*
	Japan		35*		35*		35*		35*
	Jugo Slavia	45	45	45*	45	45*	45	55*	55
2292	Latvia	40*	40	40*	40	60*	60	60	60
	Lithuania					50	50	50	50
	Mexico	35	35*	40	40*	40	40*	50	50*
	Norway	40	40*	40	40*	40	40*	35	35*
	Panama	15	40*	15	40*	15*	40	15	40
	Peru	30	30*	30	30*	30	30*	30	30*
	Philippines	30	30*	30	30*	30	30*	30	30
	Poland	35	35*	35	35*	37½	37½*	42½	42½
	Portugal	35	35	35*	35*	35*	35*	35*	35*
	Puerto Rico	40	40*	40	40*	40	40*	40	40*
	Romania	40	40	40	40	40	40	50	50
	South Africa		25		25*		25*		25*
	Spain	35	35	35*	35*	50*	50*	50*	50*
	Switzerland	25	25*	25	25*	25	25*	25	25*

**Defendants' Exhibit 9.****2293****Depreciation—Los Angeles Studio**

	At Aug. 31/31	100% Depreciated	Balance	Rate	Depreciation
SILVER CITY Studio					
Equipment	2,440,567.82	921,078.02	1,519,489.80	15%	227,923.31
SILVER CITY Studio Sound					
Equipment	784,291.95		784,291.95	15%	117,665.87
SILVER CITY Studio Bldg.	2,971,870.05		2,971,870.05	5%	148,593.50
HOLLYWOOD Studio Bldg.	528,970.53		528,970.53	5%	26,448.53
					<u>\$520,631.21</u>

**2294**

Rental of Studio & Facilities  
Unabsorbed Studio Depreciation

340,927.05  
179,704.16

\$520,631.21**Defendants' Exhibit 10.**

	Interest Paid	
Date	Amount	Check #
Sept. 30/31	\$50,000.	1934
" 26/31	59,992.42	1942
" 24/31	107,979.93	2794
Nov. 5/31	44,446.93	3040
" 21/31	130,265.65	3752
Dec. 19/31	130,497.42	4700
Jan. 14/32	129,809.47	5253
Feb. 13/32	126,701.52	6308
Mar. 12/32	122,728.73	7071
Apr. 7/32	114,689.96	7567
May 7/32	110,411.13	8512
June 4/32	106,884.28	9616
July 1/32	103,832.51	10581
" 30/32	101,974.98	11701
Sept. 1/32	119,344.88	12963

**2295**\$1,559,559.79

2291

2292

Argentina	25	25*	30	30*	30	30*	30	30*
Australia		40*		40*		40*		40*
Austria	35	35*	40*	40	40*	40	40*	40*
Belgium	15*	25	15*	25*	25*	25	25*	25*
British West Indies		25		25*		45*		40*
Brazil	15	30*	15	30*	15	30*	15	30*
Bulgaria	30	40	35	35*	40	40	40	40
Chile	30	30*	30	30*	30	30*	30	30*
China		30*		30*		30*		30*
Colombia	35	35*	35	35*	35	35*	45	45
Cuba	35	35*	35	35*	40	40*	40	40*
Czecho-Slovakia	35	35	35	35	35	35	60	60
Denmark	35	35*	35	35*	35	35	35	35
Dutch East Indies		35*		35*		45*		45*
Egypt	15	40	25*	25*	25*	25*	25	25*
Estonia					40	40	40	40
Finland	35*	35*	40*	40*	40	40*	40	40*
France	35*	35	40*	40	60*	60	60*	60
Germany	40*	40	50*	50	50*	50	50	50*
Great Britain		35*		35*		35*		35*
Greece	40	40	35*	35*	30*	30*	30*	30*
Guatemala	35	35*	35*	35*	35*	35*	40	40
Holland	15*	35*	30*	30	30*	30	35	35
Hungary	35*	35*	35*	35*	35	35*	35	35*
India		30*		30*		30*		30*
Italy	15*	38*	45*	35	36 1/2*	36 1/2*	35*	35*
Japan		35*		35*		35*		35*
Jugo Slavia	45	45	45*	45	45*	45	55*	55
Latvia	40*	40	40*	40	60*	60	60	60
Lithuania					50	50	50	50
Mexico	35	35*	40	40*	40	40*	50	50*
Norway	40	40*	40	40*	40	40*	35	35*
Panama	15	40*	15	40*	15*	40	15	40
Peru	30	30*	30	30*	30	30*	30	30*
Philippines	30	30*	30	30*	30	30*	30	30
Poland	35	35*	35	35*	37 1/2	37 1/2*	42 1/2	42 1/2
Portugal	35	35	35*	35*	35*	35*	35*	35*
Puerto Rico	40	40*	40	40*	40	40*	40	40*
Romania	40	40	40	40	40	40	50	50
South Africa		25		25*		25*		25*
Spain	35	35	35*	35*	50*	50*	50*	50*
Straits Settlements	35	35*	35	35*	35	35*	35	35
Sweden	35	35*	35	35*	35	35*	35	35
Switzerland	20	35	25*	25	25*	25*	25*	25*
Turkey	40	40	30*	30				
Uruguay			40	40	47	47	83	83
Venezuela	35	35*	35*	35*	40*	40*	50*	50*

Asterisk (\*) after percentage figure denotes rate applicable to distribution of LETTY LYNXON in the particular country opposite which the figure appears, as well as, (by reference to column heading) the version distributed therein for fiscal year shown, i.e. whether regular English version or one of the foreign versions (French, German, Italian or Spanish). Figures not so marked were not applicable to distribution of such motion picture.



## Defendants' Exhibit 15.

2296

Contracts received 1931-32 Season

2297

2298

Week-ending	No.	To date	Week-ending	No.	To date
5/30 1931	7		1/30	151	6447
6/6	53	60	2/6	99	6546
6/13	74	134	2/13	126	6672
6/20	147	281	2/20	130	6802
6/27	150	431	2/27	131	6933
7/3	109	540	3/5	71	7004
7/11	154	694	3/12	84	7088
7/18	91	785	3/19	90	7178
7/25	166	951	3/26	60	7238
8/1	108	1059	4/2	50	7298
8/8	148	1207	4/9	52	7340
8/15	258	1465	4/16	48	7388
8/22	249	1714	4/23	(red) 108	7280
8/29	116	1830	4/30	35	7315
9/4	208	2038	5/7	35	7350
9/12	218	2256	5/14	16	7366
9/19	244	2500	5/21	50	7416
9/26	160	2660	5/28	20	7436
10/3	228	2888	6/4	12	7448
10/10	246	3134	6/11	27	7475
10/17	207	3341	6/18	31	7506
10/24	250	3591	6/25	25	7531
10/31	238	3829	7/2	14	7545
11/7	230	4059	7/9	12	7557
11/14	224	4283	7/16	23	7580
11/21	233	4536	7/23	11	7591
11/28	256	4792	7/30	10	7601
12/5	252	5044	8/6	6	7607
12/12	262	5306	8/13	12	7619
12/19	238	5544	8/20	10	7629
12/26	170	5714	8/27	10	7639
1/2 1932	102	5816	9/3	3	7642
1/9	157	5973	9/10	12	7654
1/16	162	6135	9/17	2	7656
1/23	161	6296	9/24	10	7666

2299

Extract from printed form of contract under which motion picture Letty Lynton was licensed by the defendant, Metro-Goldwyn-Mayer Distributing Corporation to exhibitors covering the 1931-32 release season, the motion picture Letty Lynton being designated in said schedule as "Production #208 Joan Crawford #2".

## SCHEDULE

Number	Designation of Phonoplay	Consecutive days run	License Fee or Minimum Guar- antee Against Percentage of Receipts	License Fee or Guarantee	% of all Gross receipts	Gross Receipts In Excess of which Distrib- utor shares	Distributor's Percentage of Excess	Score Charge License Fee
1	WALLACE BEERY No. 1							
2	WALLACE BEERY No. 2							
3	COSMOPOLITAN No. 1							
4	COSMOPOLITAN No. 2							
5	COSMOPOLITAN No. 3							
6	COSMOPOLITAN No. 4							
7	JOAN CRAWFORD No. 1							
8	JOAN CRAWFORD No. 2							
9	MARION DAVIES No. 1							
0	MARION DAVIES No. 2							
1	GRETA GARBO No. 1							
2	GRETA GARBO No. 2							
3	JOHN GILBERT No. 1							
4	JOHN GILBERT No. 2							
5	JOHN GILBERT No. 3							
6	WILLIAM HAINES No. 1							
7	WILLIAM HAINES No. 2							
8	WILLIAM HAINES No. 3							
9	BUSTER KEATON No. 1							
0	BUSTER KEATON No. 2							
1	LAUREL & HARDY No. 1							
2	LUNT & FONTANNE No. 1							
3	ROBERT MONTGOMERY No. 1							
4	ROBERT MONTGOMERY No. 2							
5	ROBERT MONTGOMERY No. 3							
6	RAMON NOVARRO No. 1							
7	RAMON NOVARRO No. 2							



## Defendants' Exhibit 16.

2302	Production Number	Designation of Photoplay	Consecutive days run	License Fee or Minimum Guarantee Against Percentage of Receipts	% of all Gross receipts	Gross Receipts In Excess of which Distributor shares	Distributor's Percentage of Excess	Score Charge License Fee
	228	NORMA SHEARER No. 1						
	229	NORMA SHEARER No. 2						
	230	LAWRENCE TIBBETT No. 1						
	231	AFTER ALL (Based upon the play by John Van Druten)						
	232	ARSENE LUPIN (Based upon the famous play "Arsene Lupin" by M. LeBlanc and F. de Croisset)						
2303	233	THE AWAKENING (An original story by John Van Druten)						
	234	BOARDING SCHOOL (An original story by Helen Meinardi)						
	235	BRIDGE VS. BRIDGE (Based upon the story by Ed. L. McKenna)						
	236	FLYING HIGH (Based upon George White's famous Broadway success, by J. McGowan, DeSilva, Brown and Henderson)						
2304	237	WIFE TO HUGO (Based upon the novel by John Baines)						
	238	GUILTY HANDS (An original story by Bayard Veiller)						
	239	HONOLULU (An original story by Mildred Cram)						
	240	NIGHT COURT (An original play by Charles Beahan and Mark Hellinger)						

## Defendants' Exhibit 16.

2305

Production Number	Designation of Photoplay	Consecutive days run	License Fee or Minimum Guarantee Against Percentage of Receipts	License Fee or Guarantee	% of all Gross receipts	Gross Receipts In Excess of which Distributor shares	Distributor's Percentage of Excess	Score Charge License Fee
241	RED HEADED WOMAN. (Based upon the story by Katherine Brush)							
242	THE SQUAW MAN. (Based upon the play by E. M. Royce)							
243	THREE WISE FOOLS. (Based upon the play by Austin Strong)							
244	THE MARQUEE FIVE, No. 1							
245	THE MARQUEE FIVE, No. 2							
246	THE MARQUEE FIVE, No. 3							
247	THE MARQUEE FIVE, No. 4							
248	THE MARQUEE FIVE, No. 5							
251	EMMA (Starring Marie Dressler)							
252	PROSPERITY (Starring Marie Dressler)							

2306

It is understood and agreed that where a photoplay is designated in this schedule only by the name of a single star, or only by the name of a single director, this shall not refer to and there shall not be included herein because of such designation any picture in which the said star shall appear with any other star or stars, whether designated in the schedule or not, nor any picture which may be directed by the said director and in which there shall appear any star or stars.

2307

IT IS FURTHER UNDERSTOOD AND AGREED THAT DISTRIBUTOR MAY RELEASE AT ANY TIME, AND INDEPENDENTLY OF THIS AGREEMENT, AN ADDITIONAL PHOTOPLAY OF ANY STAR LISTED IN THE SCHEDULE (BUT NOT MORE THAN THREE (3) SUCH ADDITIONAL PHOTOPLAYS ALTOGETHER DURING THE TERM OF THIS AGREEMENT); THAT NOTHING IN THIS AGREEMENT CONTAINED GIVES EXHIBITOR ANY RIGHT TO ANY OF SUCH ADDITIONAL PHOTOPLAYS, AND, THAT ANY THEREOF, WHENEVER RELEASED, MAY BE EXHIBITED AND/OR LICENSED FOR EXHIBITION BY DISTRIBUTOR FREE OF ANY CLAIM THERETO BY EXHIBITOR HEREUNDER, AND WITHOUT AFFECTING IN ANY MANNER DISTRIBUTOR'S OBLIGATION TO FURNISH AND EXHIBITOR'S OBLIGATION TO PLAY AND/OR PAY FOR ANY AND ALL THE PHOTOPLAYS CONTRACTED FOR HEREUNDER.

## Defendants' Exhibit 17.

### CORPORATE ORGANIZATION CHART

AUGUST 31, 1932.

#### Loew's Incorporated

Owns 100% of stock of M-G-M Company, Inc.

Owns 18,901-21/48 Shares of Metro-Goldwyn Pictures Corporation 7% Cumulative Preferred Stock

#### M-G-M Company Inc.

Owns 100% of Common Stock of

#### Metro-Goldwyn Pictures Corporation

Capitalization:

157,913 $\frac{3}{8}$  Shares 7% Cumulative Preferred stock at \$27.00 Par -

\$4,263,661.13

620,000 Shares Common Stock at \$5.00 Par 3,100,000.00

Owns 100% of Stock of

#### Metro-Goldwyn-Mayer Distributing Corporation Domestic Distributor

#### Metro-Goldwyn-Mayer Corporation Producer

#### Culver Export Corporation

Owns 100% or less of

Various Subsidiaries Distributing  
in Foreign Countries per  
list attached

(NOTES:) The Corporate Chart at August 31, 1933 was the same as shown above except that the total shares of Metro-Goldwyn Pictures 7% Cumulative Preferred Stock owned by Loew's Incorporated was 18,601-41/48 Shares, and the total outstanding 7% Cumulative Preferred Stock of Metro-Goldwyn Pictures Corporation was 154,173 $\frac{3}{8}$  Shares—\$4,162,681.13.

The Cumulative Preferred Stock of Metro-Goldwyn Pictures Corporation was listed on the New York Stock Exchange and except as above stated was held by outside stockholders.

## Defendants' Exhibit 17:

**SUBSIDIARIES OF CULVER EXPORT CORPORATION  
DISTRIBUTING IN FOREIGN COUNTRIES**

2311

August 31, 1932.

Operates in	Name of Company
Argentina	M-G-M de la Argentina
Australia	M-G-M Ltd.
New Zealand	M-G-M-N.Z.Ltd.
Austria	M-G-M-Films G.m.b.H.
Belgium	M-G-M S.A.Belge
Brazil	M-G-M do Brazil
Bulgaria	M-G-M-Film Vertriebs A.G.
Chile	M-G-M de Chile
China	M-G-M of China
Colombia	M-G-M de Colombia
Cuba	M-G-M de Cuba S.A.
Czechoslovakia	M-G-M A.G.
Denmark	M-G-M A.S.
Netherlands East Indies (Java) and Straits Settlements (Singapore)	M-G-M Oriental Inc.
Egypt	M-G-M of Egypt
Finland	O.Y.M-G-M-Films O.B.
Greece and Turkey	M-G-M S.A.F.
Germany	M-G-M-Films A.G.
Great Britain	M-G-M Pictures Ltd.
Hungary	M-G-M Films (Hellas) Ltd.
Holland	N/V M-G-M Films Company
India	M-G-M Distributing Corporation
Italy	M-G-M India Ltd.
Japan	S.A.I.M-G-M Films
Yugoslavia	M-G-M Company Ltd.
Romania	M-G J.D.Z.F.F.
Spain	Filmindustrie A.G. M-G-M
Mexico	M-G-M de Mexico
Norway	M-G-M A.S.
Panama	M-G-M de Panama
Peru	M-G-M del Peru
Portugal	T.F. M-G-M
Puerto Rico	M-G-M de Puerto Rico
Russia	M-G-M Films Ltda.
Sweden	M-G-Films S.A.R.

2312

2313

*Defendants' Exhibit 17.*

2314

Operates in  
 South Africa  
 Spain  
 Switzerland  
 Venezuela  
 British West Indies  
 Philippines  
 Sweden

## Name of Company

M-G-M Films S.A. Proprietary Ltd.  
 M-G-M Iberica S.A.  
 M-G-M S.A. Geneva  
 M-G-M de Venezuela  
 M-G-M of West Indies  
 M-G-M Manila Inc.  
 Filmaktiebolaget Le Mat-M-G

## NOTE:—#1

All of above corporations were wholly owned by Culver Export Corporation except Filmaktiebolaget Le Mat—Metro-Goldwyn (Sweden) of which Culver Export Corporation owned 115/215 of the capital stock.

2315

## NOTE:—#2

Philippine subsidiary become wholly owned during year ended August 31st, 1933; 50 $\frac{2}{3}$ % owned at August 31, 1932.

## NOTE:—#3

Distribution in Guatemala during the year ended August 31, 1933 was carried on thru a branch office of Culver Export Corporation located in that country.

## NOTE:—#4

With the exceptions noted in Notes 1, 2 and 3, the status of subsidiaries was the same in 1933 as in 1932.

2316

# **Defendants' Exhibit 18.**

## **METRO-GOLDWYN PICTURES CORP.**

### **NET INCOME FROM "LETTY LYNTON"**

Film Rental Income (excluding Canada)	\$727,053.84	
Less: Retained by M.G.M. Dist. Corp. (20%)	145,410.77	
Net Film Rental Income	\$581,643.07	
Distributing Expense—2.15% of Same	12,505.33	
	<hr/>	
Production Cost	\$569,137.74	
	391,542.24	
	<hr/>	
Net Income (excluding Canada)		\$177,595.50
Canadian Film Rental Income	\$27,369.72	
Less: Retained by Regal Films Ltd.	11,432.29	
	<hr/>	
Net Film Rental Income	\$15,937.43	
Less:		
Cost of Prints	\$2,479.40	
E R P I Royalty	600.00	
M P P D A Dues	79.69	3,159.09
	<hr/>	
Net Income from Canada		12,778.34
		<hr/>
Net Income from "Letty Lynton"		\$190,373.84
Less Federal Income Taxes 14½%		29,604.21
		<hr/>
		\$160,769.63
		<hr/>



# Defendants' Exhibit 18-A.

## METRO-GOLDWYN PICTURES CORPORATION

### TOTAL DISTRIBUTING EXPENSE RATIO TO FILM RENTAL INCOME

YEAR ENDED AUGUST 31, 1932

Film Rental Income (excluding Canada) \$30,020,526.08

Less: Retained by M-G-M Dist. Corp. (20%) 6,004,105.22

Net Film Rental Income

\$24,016,420.86

#### DISTRIBUTING EXPENSE

Home Office Expense—Per Schedule  
(18-B)

\$567,617.36

Depreciation of Equipment—Home Office 14,927.54

\$582,544.90

LESS

Trailer Income

\$50,000.08

Miscellaneous Income

16,513.19

66,513.27

Total Distributing Expense (—2.15% of  
Net Film Rental Income)

\$516,031.63



# **Defendants' Exhibit 18-B.**

## **METRO-GOLDWYN PICTURES CORPORATION**

### **HOME OFFICE EXPENSES OF METRO-GOLDWYN PICTURES CORP. & METRO-GOLDWYN-MAYER DIST. CORP.**

**Year Ended August 31, 1932**

Salaries—General (Per Schedules 18-C1, 18-C2, 18-C3)	\$1,077,254.55
Rent and Light	108,921.58
Advertising	94,844.29
General Expense	76,550.31
Telephone & Telegraph	64,075.25
Traveling	59,979.93
Stationary and Printing	46,084.00
Legal	56,552.02
Film Repairs and Maintenance	33,450.70
Office Supplies and Expense	27,560.63
Postage	25,560.00
Scenario	20,626.79
"The Distributor" (Magazine)	20,586.72
Branch Office Supplies & Expenses	19,051.45
Taxes	17,855.43
Branch Shipping Supplies and Expense	16,772.05
Sound Instruction	15,305.96
Exchange	15,143.35
Insurance	13,501.69
Accounting	13,016.50
Branch Stationary and Printing Ex- pense	11,742.34
"Leo" (The Lion Tour)	9,248.52
Trackless Train	8,822.50
Shipping Supplies and Expense	6,904.27
Freight and Express	4,484.24
Sales Promotion	3,818.86
Branch Postage	2,479.71
Managers Convention	2,408.10

**\$1,872,601.74**

Reimbursed by Metro-Goldwyn-Mayer  
Dist. Corp.

**1,304,984.38**

**\$ 567,617.36**

2326

## Defendants' Exhibit 18-C1.

## METRO-GOLDWYN PICTURES CORPORATION

## SALARIES

Year Ended August 31, 1932

2327

Felix F. Feist	\$ 76,875.00
David Bernstein	60,660.00
N. M. Schenck	50,550.00
J. Robert Rubin	50,550.00
Wm. F. Rodgers	38,437.50
Howard Dietz	37,812.50
T. J. Connors	25,625.00
E. M. Saunders	25,625.00
Fred C. Quimby	25,625.00
E. J. Bowes	25,033.56
Silas F. Seadler	17,937.50
Bertram Bloch	16,636.25
Chas. K. Stern	15,375.00
D. O. Decker	12,900.00
Jay A. Gove	11,610.00
Alan F. Cummings	11,610.00
Chas. J. Sonin	10,320.00
Wm. R. Ferguson	9,288.00
H. L. Burrows	9,030.00
S. S. Braumberg	9,030.00
Wm. D. Kelly	9,030.00
J. S. MacLeod	9,030.00
Nina Lewton	7,740.00
Chas. E. Quick	7,740.00
Wm. G. Crawford	7,380.00
Thos. Gerety	6,450.00
E. W. Aaron	6,450.00
A. M. Holah	5,195.00
Jas. Englander	5,195.00
Wm. O'Brien	5,195.00
E. H. Brauer	5,195.00
F. E. Mc Roy	5,195.00
Geo. E. Berry	5,195.00
Jos. Flynn	4,935.25
T. Halsey Raines	4,896.67
Wm. Marsh	4,675.50

2328

## Defendants' Exhibit 18-C2.

Wm. L. Engelhardt	4,675.50	2329
Pat E. Reis	4,415.75	
Clias F. Deesen	4,415.75	
Wm. B. Jones	4,415.75	
Albert Druaux	4,284.00	
Jas. Pagliaro	4,284.00	
Morris Alin	4,415.75	
J. H. Zimmerman	3,661.00	
J. M. Cummings	3,661.00	
J. R. Connacher	3,661.00	
Wm. F. Reilly	3,661.00	
Ross P. MacLeod	3,661.00	
Ernest Morrell	3,922.50	
Parke D. Agnew	3,661.00	
Arthur Lacks	3,922.50	
Wm. T. Wilson	3,922.50	2330
Milton Beecher	3,622.50	
Louis Field	3,399.50	
Nathan Rapport	3,399.50	
Rose Klein	3,242.60	
Joel Bezahl	3,399.50	
Gladys Arkenburgh	3,138.00	
Beatrice Rumashevsky	3,138.00	

## Defendants' Exhibit 18-C2.

Metro-Goldwyn Pictures Corp.—Salaries yr ended 8/31/32—

Contd.—Sheet #2

A. C. Gonzalez	3,000.00	2331
Hal Roach	2,920.00	
Arthur Sterling	2,876.50	
Marie Ritter	2,876.50	
Rose Leshner	2,876.50	
Joe Zelenko	2,876.50	
Janet Markowitz	2,876.50	
John Donohue	2,632.50	
Thos. F. Grady	2,632.50	
Val Lewton	2,632.50	
Julie A. Herne	2,632.50	
Hassell Brooks	2,632.50	
Bertha Fried	2,632.50	
Pauline Weinberg	2,632.50	
Hilda Lesser	2,632.50	
Ida Wolpin	2,474.50	

## Defendants' Exhibit 18-C2.

2332

Anna Mae Bradford	2,369.25
Claire Mannheimer	2,369.25
John J. Ash	2,369.25
Hattie Hecht	2,436.00
M. Leezer	2,421.90
Sally Simon	2,369.25
Otto Goldberg	2,211.30
Rose Morgan	2,263.95
Ruth Lewis	2,263.95
Melvin Heymann	2,106.00
Harry Krebs	2,106.00
Alice Goodman	2,106.00
Eve Zucker	2,106.00
Mina Sidel	2,106.00
Augusta Zpritzer	2,106.00
Morris Krumpel	2,106.00
O. K. Swann	2,106.00
Ruth Glass	2,106.00
Edward F. Nevers	2,106.00
Lydia Bauer	2,000.70
M. Eisenstadt	2,000.70
Alfred De Oro, Jr.	2,000.70
Joe L. Seeley	2,259.25

2333

Robert Long	1,842.75
Belle Landau	1,842.75
Rose M. Gaines	1,842.75
Clare Peeler	1,947.75
Helen Boyis	1,842.75
Rudolpho Tovany	1,842.75
Ira S. Martin	1,842.75
H. D. Hagan	1,842.75
Matilda Green	1,842.75
Harold Postman	1,842.75
John E. Daly	1,842.75
Pearl Fox	1,842.75
Mae O'Donnell	1,842.75
W. H. Hulings	1,842.75
Mildred Lewis	1,737.45
Josephine Markus	1,737.45
Alice Fleming	1,737.45
Dorothy Aron	1,790.10
Ira Singer	1,737.45
N. Ventura	1,737.45
Mildren Gordon	1,737.45
Florence Ehrlich	1,737.45
Mary Daly	1,737.45

2334

# Defendants' Exhibit 18-C3,

Metro-Goldwyn Pictures Corp.—Salaries yr ended 8/31/32—

Contd.—Sheet #3

Elizabeth Callahan	1,632.15
Mae Mc Farlane	1,632.15
Dorothy Moskowitz	1,684.80
Rita Mc Carthy	1,632.15
Dorothy Prendergast	1,624.00
A. M. Ash	1,676.50
Jeanne Neuwirth	1,711.09
Marigold Ball	1,579.50
Frieda Feinstein	1,579.50
Reginna Cohen	1,579.50
Frances Wittlin	1,579.50
I. L. Hirsch	1,579.50
Marion Bokser	1,579.50
Abe Kupchik	1,579.50
Eugene Adler	1,579.50
Ida Fariel	1,526.85
Lillian Cook	1,526.85
Sidney B. Garvey	1,579.50
Carolyn Hohfeler	1,579.50
Mildred Walcott	1,466.85
Frances Kopp	859.50
Samuel Cohen	891.00
Nettie Rothschild	798.00
S. D. Morway	225.00
Benn Jacobson	897.75
Thomas E. Bailey	630.00
Joseph Maguire	270.00
Various (110 Employees)	176,921.93

1,077,254.55

2335

2336

2337

# Defendants' Exhibit 18-D1.

2338

## METRO-GOLDWYN PICTURES CORPORATION

### COMPLETED NEGATIVE COST

#### "LETTY LYNTON"

Classification

Amount

#### DIRECTION

Compensation paid to Clarence Brown	\$75,000.00	
Compensation paid to James Basevi, director of miniature department	575.42	\$75,575.42

#### PRODUCTION MANAGER AND ASSISTANTS

2339

Preparing	\$ 49.20	
Photographing	533.32	582.52

#### ASST. DIRECTOR AND CLERKS

Preparing	\$ 99.15	
Photographing	1,944.76	2,043.91

#### COMPENSATION PAID TO CAMERMEN AND ASSTS.

2340

Max Fabian	\$ 219.35
Harold Lipstein	241.05
Oliver Marsh	2,933.32
Harold Rosson	12.97
Walter Bader	37.86
Edward Fitzgerald	69.91
Harold Marzorati	43.36
Robert Palmer	7.08
Richard Wade	6.25
Harold Wenstrom	16.66
Tony Gaudio	25.00
Harold Baldwin	4.95
Wilbur Bradley	20.66
Samuel Cohen	8.25
Dale Deverman	1.77
Thos. Dowling	18.79



## Defendants' Exhibit 18-D1.

Classification	Amount	2347
Wm. Foxall	9.45	
J. B. Harper	56.40	
Robert Hoag	3.12	
Kenneth Meade	80.90	
Kyme Meade	290.44	
Thos. Tutwiler	62.71	
Mathew Kluznick	5.48	
Harry Marble	9.90	
	<hr/>	
	\$ 4,185.63	
Camera Dept. O.H.	1,045.17	5,230.80
	<hr/>	
EDITORS AND CUTTERS		2348
Working	\$ 2,747.61	
Previews and Expenses	39.50	
Proportion Dept. Overhead	221.57	
Supplies	2.38	3,011.06
	<hr/>	
COMPENSATION PAID TO STOCK TALENT		
Joan Crawford	\$18,916.68	
Robert Montgomery	10,000.02	
Nils Asther	2,400.00	
Helen Robinson	17.51	
Lewis Stone	1,125.00	
Karen Morley	41.66	

2349



## Defendants' Exhibit 18-D2.

2344

Page 2.

## "LETTY LYNTON"—Cont.

Classification

Amount

## COMPENSATION PAID TO STOCK TALENT (Cont.)

Belle Donovan	\$ 20.00
Ruth Holly	25.01
Nika Justin	15.00
Walda Mansfield	33.32
Gladys Mason	11.66
Betty Sanford	20.00
Ruth Renick	8.33

2345

\$32,634.19

Stock Talent O.H.

896.05

\$33,530.24

## COMPENSATION PAID TO PICTURE TALENT

May Robson	\$ 2,833.32
Louise C. Hale	3,000.00

\$ 5,833.32

Commission

30.17

5,863.49

## EXTRA TALENT

Salaries	\$10,766.85
Fees Central Casting	385.90

11,152.75

2346

## COMPENSATION PAID FOR STORY

Wanda Tuchok	\$ 2,333.33
John Meehan	23,333.34
D. Taylor	1,866.66
Mitzi Cummings	52.50

\$27,585.83

Book Cost

3,850.00

Miscellaneous Expense

5.64

Scenario Dept. O.H.

3,310.30

Script Expense

554.67

35,306.44

*Defendants' Exhibit 18-D2.*

Classification	Amount	2347
<b>WARDROBE—WOMEN'S</b>		
Purchased	186.95	
Studio Construction	4,618.34	
Outside Rentals	200.00	
Studio—Altering, Fitting, etc.	1,094.01	
Damage and Loss	.50	
Proportion Departmental Overhead	2,500.00	
Transportation	68.19	
Laundry and Cleaning	90.42	
Repairs by Prop Shop	3.85	
Make-Up	251.61	9,013.87

<b>WARDROBE—MEN'S</b>		
Purchased	\$ 150.00	2348
Outside Rentals	181.63	
Studio—Altering, Fitting, etc.	530.12	
Laundry and Cleaning	70.58	
Transportation	18.11	
Make-Up	282.44	1,232.88

<b>FITTING</b>		
Finishing Sets, Salary	\$ 887.50	
Operation Sets, Salary	2,017.16	
Striking Sets, Salary	268.18	
Supplies and Expense	47.14	
Percent Outside Electric Equipment	206.47	
Operation of Power Plants	21.00	2349
Proportion of Dept. Overhead	275.71	3,723.18

## Defendants' Exhibit 18-D3.

2350

Page 3.

"LETTY LYNTON"—Cont.

Classification

Amount

## AUTOMOBILE AND TRUCK HIRE

Company Equipment  
Outside Rentals

\$ 372.49  
264.93 \$ 637.42

## MEALS AND LODGING

19.85

## MEALS—COMPANY RESTAURANT

182.35

## LOCATION EXPENSE

Salary and Location Man

20.79

2351

## NEGATIVE RAW STOCK

126,980 ft. @ .04

\$ 5,079.20

2,120 ft. @ .03

63.60

5,142.80

## NEGATIVE PROCESSING

115,165 ft. @ .015

\$ 1,727.49

12 fades @ 1.00

12.00

1,739.49

## POSITIVE RAW STOCK

367,291 ft. @ .01

\$ 3,672.91

400 ft. @ .01 1/4

5.00

3,677.91

2352

## POSITIVE PROCESSING

138,305 ft. @ .0315

\$ 4,356.31

80,890 ft. @ .0225

1,820.03

124,635 ft. @ .015

1,869.21

32 fades @ .50

16.00

8,061.55

## Defendants' Exhibit 18-DJ.

TITLES	Classification	Amount	2353
Temp Title Stock & Lab. Expense Final Title First Cost		\$ 40.89 46.60	87.49
PUBLICITY SALARIES			4,206.10
STILLS			
Salary Still Man Number of Stills		\$ 444.31 709.62	1,153.93
WORKMEN'S COMPENSATION INSURANCE			803.49
SPECIAL SHOTS			
Newcomb Shots Reis Shots		\$ 1,092.80 195.75	1,288.55
MISC. UNCLASSIFIED EXPENSE			1,722.07
RECORDING CHARGES			6,558.00
RE-RECORDING CHARGE			
Preliminary Film Final Film Final Disc.		\$ 27.20 249.60 663.98	940.78
MUSIC			
Songs, Copyrights, Purchases Arranging Scoring Miscellaneous		\$ 5.00 255.64 200.00 495.78	2355
			956.42

## Defendants' Exhibit 18-D4.

2356

Page 4.

## "LETTY LYNTON"—Cont.

Classification

Amount

## MUSICIANS

Rehearsing	\$ 144.71
Recording	1,030.00
Side Line	134.37
Vietrola Operators	125.00
Overhead	610.76
	<u>\$ 2,314.84</u>

## COST OF SETS

2357

Set No.	Name of Set	Labor	Material	Total Cost
1100	Test Set	\$ 41.87	\$ 26.35	\$ 71.22
1101	Int. Letty's Cabin & Corridor	1,516.01	575.14	2,091.15
1102	Int. Letty's Hotel Room	1,724.78	756.94	2,481.72
1103	Int. Tango Barn	1,065.94	364.34	1,430.28
1104	Int. Lynton Home—Lower Floor	1,604.58	645.67	2,250.25
1105	Int. Lynton Home—Upper Floor	1,573.14	505.39	2,078.53
1106	Int. Hotel Lobby	1,227.18	710.69	1,937.87
1107	Int. Renault's Hotel Suite	2,065.07	784.39	2,849.46
2358 1108	Int. Customs Dock	1,066.84	556.20	1,623.04
1109	Int. Lynton Home—Dining Room	362.13	141.14	503.27
1110	Int. Roof Cafe Aboard Boat	1,693.65	927.02	2,620.67
1111	Int. Dining Room Aboard Boat	496.70	300.78	797.48
1112	Int. Darrow Home	746.88	377.32	1,124.20
1113	Ext. Street and Tango Barn	433.55	453.72	887.27
1114	Int. District Attorney's Office	624.96	179.84	804.80
1115	Int. Pit in Customs Dock	248.19	80.66	328.85

## Defendants' Exhibit 18-D4.

Classification		Amount		2359
116	Ext. Country Home and Road	1.04	30.83	31.87
117	Ext. Boat (Fox Studio Location)	510.54	2,344.06	2,854.60
118	Int. Subway Car	327.65	62.51	390.16
119	Ext. Subway Entrance	276.08	160.16	436.24
120	Ext. Darrow Home	136.69	141.88	278.57
121	Ext. Courthouse	13.01	.88	13.89
122	Int. Hale's New York Apt.	88.47	9.19	97.66
123	Ext. New York Street	165.85	34.18	200.03
124	Int. New Bedroom and Bath	325.54	152.56	478.10
125	Ext. Lynton Home	328.48	193.27	521.75
175	Process—Victoria (S. A. Town)	76.49	68.20	144.69
176	Minature Airplane Backgrounds	338.32	103.12	441.44
177	Process—Deck of Liner	271.40	118.81	390.21
178	Process—Sleigh	98.20	65.60	163.80
179	Process—Ext. Stern of Ship	170.84	656.05	826.89
180	Process—Ext. Deck of Tender	285.58	95.05	380.63
181	Process—Ext. Deck of Steamer approaching New York	18.84	10	18.94
190	Inserts and Sound Effects	7.07	4.23	11.30
194	Synchronizing	7.25		7.25
196	Construction Supervision		3,704.65	3,704.65
197	Preliminary Work	122.92	50.06	172.98
198	Build Equipment and Props	100.02	103.82	203.84
199	Striking Sets		1,200.00	1,200.00
Total		\$20,164.75	\$16,684.80	\$36,849.55

2360

2361



## Defendants' Exhibit 18-D5.

Page 5.

2362

"LETTY LYNTON"—Cont.

Forward from page 4

\$262,682.69

## GENERAL STUDIO OVERHEAD—ARRIVED AT AS FOLLOWS

Studio Overhead—Detail on Schedule A

Annexed Hereto

\$2,246,793.28

Addition to Reserve for Continuities

500,000.00

Income from Royalties from Music Pub-

lishers on Songs Used In Productions

11,520.35

*Salaries Paid by New York*

Thalberg

\$151,650.00

Other Production Executives

(per exh. 13)

26,000.00

177,650.00

2363

Compensation Paid to Louis B.

Mayer Pictures

922,141.09

Depreciation—Los Angeles

Studio (per exh. 9)

520,631.21

Less: Rental of Studio &amp;

Facilities

334,464.61

Unabsorbed Studio Depreciation

186,166.60

Interest Paid (per exh. 10)

1,559,559.79

Interest on Investment in Studio Plant

&amp; Equipment (per Defts' Ex. 18E)

310,584.16

\$5,891,374.57

2364

1/36 of Above Allocated to Letty Lynton on

Basis of 36 Pictures Produced During Year

163,649.29

Total Negative Cost

\$426,331.98

25% Charged to Culver Export Corp.

106,582.99

Negative Cost to Metro Goldwyn Pictures Corp.

\$319,748.99

## POSITIVE &amp; OTHER DIRECT COSTS

234 Prints

\$35,736.33

Advertising—Direct (per exhibit 12)

24,293.05

Censorship

1,684.35

E R P I Royalty—U. S.

4,000.00

Music Royalty

1,465.02

Records

984.38

M P P D A Dues—U. S.

3,630.12

71,793.25

Total Production Cost—Metro Goldwyn Pictures Corp.

(excluding Canada)

\$391,542.24

(Figures in italics were red in original.)

## Defendants' Exhibit 18-E1.

2365

## Schedule A

## STUDIO OVERHEAD

Classification	Dr.	Cr.
aries—Executive Department	\$1,047,599.43	
penses—Executive Department	16,482.79	
aries—Accounting Department	100,421.33	
penses—Accounting Department	21,309.88	
aries—Production Department	72,346.26	
penses—Production Office	2,368.15	
aries—Casting Office	41,600.32	
penses—Casting Office	35,210.19	
aries—Projection Department	2,225.51	
penses—Projection Department	31.42	2366
aries and Expenses—Business Office	48,847.61	
ayage and Auto Hire	1,748.47	
unt Engineering and Planning	50,660.93	
pense of Personnel Department	220.63	
aries, Maintenance	123,602.31	
aintenance—Repair of Buildings	32,553.44	
pair and Maintenance of Facilities	151,527.64	
gal & Other Expenses re Patent Rights	2,060.52	
gal Salaries and Expense	30,573.43	
ntal of Studio and Facilities	334,464.61	
urance—General	33,635.91	
urance—Miscellaneous Compensation	54,051.30	
es—City, County and State	72,461.51	
ilway Transportation	2,054.97	
ailing Expense	11,068.40	2367
rinting and Stationery	14,745.02	
ock Library Expense	16,298.66	
an Mail Expense	2,514.53	
esses not covered by Insurance	496.65	
ntertainment	8,440.23	
onations	6,928.99	
ew York Office Expense In Connection		
with Production	149,520.31*	
amp Tax	432.72	

\* This figure corrected to \$151,125.59 (Rec. p. 738.)

## Defendants' Exhibit 18-E1.

2368	Classification	Dr.	Cr.
	Salaries of Directors Unassigned	27,715.49	
	Miscellaneous Unclassified Expens	19,357.06	
	Rejected Continuity Charges and Songs	63,996.57	
	Accumulation on Rejected Pictures	151,686.80	
	Film Rentals for Studio Showing	3.05	
	Heating and Ventilation	6,357.82	
	Button Deposit		\$ 18.00
	Salvage Yard		9.41
	Dues	24,765.60	
	Uncollectible Accounts Receivable	3,970.81	
	Home Office Unclassified	46,081.93	
	Freight & Handling		7,809.33
	Telephone Expense	86,677.60	
	Telegraph Expense	8,651.48	
2369	Experimental Work—Trick Cameras	24,678.10	
	Executive Dining Room Expense	8,485.20	
	Flowers for Executive Office	702.61	
	Private Dining Room in Commissary	1,501.43	
	Income from Use of Flowers		4,011.45
	Adjustment of Overhead for year ended 8/27/31		9,910.89

2370

## Defendants' Exhibit 18-E2.

## Schedule A (Continued)

## STUDIO OVERHEAD

Classification	Dr.	Cr.	
Department Overhead (Balances):			2371
Unassigned Salaries—Domestic			
Stock Co.	\$813,240.63		
Less: Percentage Charged to			
Productions	128,855.26		
	<u>\$684,385.37</u>		
Less: Profit from Stock			
Talent Rentals	95,170.98		
	<u>\$589,214.39</u>		
Less: Unassigned			
Salaries	\$304,429.80		
Less: Directors (12,000.00)			
Less: Foreign (1,240.88)	291,188.92	\$298,025.47	2372
		2,470.83	
Restaurant		\$113,249.85	
Overabsorbed Balance—Sound Overhead		3,593.52	
Wardrobe Dept.		14,287.16	
Auto & Trucking		861,839.24	
Laboratory		20,573.48	
Still Room			
Construction Dept.	5,211.73		
Publicity	101.53		
Scenario Dept.		30,532.41	
Editorial Dept.	11,841.67		
Property Dept.	7,708.62		
Music Dept.	21,330.20		
Camera Dept.	9,781.52		
Precision Machine Shop	141.03		
Portrait Dept.	63.18		2373
Mechanical Dept.	9,379.54		
Art Dept.	15,204.64		
Miniature and Trick Dept.	12,280.69		
Sewcombe Department	1,307.77		
Print Shop		439.75	
Salvage Yard		162.52	
Advertising Dept.	2,013.84		
Props—Rental		1,552.80	
Electrical Equipment Rentals		93.76	
Other Equipment Rentals		600.98	
Profit from Outside Producers		51,438.35	
Rental of Standing Sets		10,245.00	
Foreign Department Overhead (Unabsorbed)	17,173.36		

\$3,377,161.18 \$1,130,367.90

## STUDIO OVERHEAD

Classification		Dr.	Cr.	
Department Overhead (Balances):				2371
Unassigned Salaries—Domestic				
Stock Co.	\$813,240.63			
Less: Percentage Charged to Productions	128,855.26			
	<u>\$684,385.37</u>			
Less: Profit from Stock Talent Rentals	95,170.98			
	<u>\$589,214.39</u>			
Less: Unassigned Salaries	\$304,429.80			
Less: Directors (12,000.00)				
Less: Foreign (1,240.88)	291,188.92	\$298,025.47		2372
Restaurant		2,470.83		
Overabsorbed Balance—Sound Overhead			\$113,249.85	
Wardrobe Dept.			3,593.52	
Auto & Trucking			14,287.16	
Laboratory			<u>861,839.24</u>	
Still Room			20,573.48	
Construction Dept.	5,211.73			
Publicity	101.53			
Scenario Dept.			30,532.41	
Editorial Dept.	11,841.67			
Property Dept.	7,708.62			
Music Dept.	21,330.20			
Camera Dept.	9,781.52			
Precision Machine Shop	141.03			
Portrait Dept.	-63.18			2373
Mechanical Dept.	9,379.54			
Art Dept.	15,204.64			
Miniature and Trick Dept.	12,280.69			
Newcombe Department	1,307.77			
Print Shop			439.75	
Salvage Yard			162.52	
Advertising Dept.	2,013.84			
Props—Rental			1,552.80	
Electrical Equipment Rentals			93.76	
Other Equipment Rentals			600.98	
Profit from Outside Producers			51,438.35	
Rental of Standing Sets			10,245.00	
Foreign Department Overhead (Unabsorbed)	17,173.36			
		\$3,377,161.18	\$1,130,367.90	
			2,246,793.28	
		<u>\$3,377,161.18</u>	<u>\$3,377,161.18</u>	

## Defendants' Exhibit 18-F.

2374

## METRO-GOLDWYN PICTURES CORP.

INTEREST ON INVESTMENT IN STUDIO PLANT AND EQUIPMENT  
YEAR ENDED AUGUST 31, 1932

At August 31, 1931

Land		\$ 969,210.00
Buildings	\$3,528,251.97	
Less Reserve for Depreciation	838,154.54	
		<u>2,690,097.43</u>

2375

Equipment	\$3,846,210.07	
Less Reserve for Depreciation	2,166,959.25	1,679,250.82
		<u>1,679,250.82</u>

\$ 5,338,558.25

At August 31, 1932

Land		\$ 969,210.00
Buildings	\$3,578,538.57	
Less Reserve for Depreciation	1,013,196.57	2,565,342.00
		<u>2,565,342.00</u>

Equipment	\$3,992,243.38	
Less Reserve for Depreciation	2,512,548.43	1,479,694.95
		<u>1,479,694.95</u>

2376

\$ 5,014,246.95

\$10,352,805.20

Average Investment (one-half)

5,176,402.60

Interest at 6%

\$ 310,584.16



## Defendants' Exhibit 19.

2377

## METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION

## NET INCOME FROM "LETTY LYNTON"

Film Rental Income	\$727,053.84	
--------------------	--------------	--

Less: Metro Goldwyn Pictures Corp.		
------------------------------------	--	--

Share (80%)	581,643.07	
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Net Film Rental Income	\$145,410.77	
------------------------	--------------	--

Distributing Expense—76.87%	111,777.26	2378
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Net Income from "Letty Lynton"	\$33,633.51	
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Less: Federal Income Taxes 14½%	4,876.86	
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	<u>\$28,756.65</u>	
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2379

# **Defendants' Exhibit 19-A.**

## **METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION**

### **TOTAL DISTRIBUTING EXPENSE RATIO TO FILM RENTAL INCOME YEAR ENDED AUGUST 31, 1932**

Film Rental Income (excluding Canada)	\$30,020,526.08
Less: Metro Goldwyn Pictures Corp. Share (80%)	24,016,420.86

Net Film Rental Income

\$6,004,105.22

#### **DISTRIBUTING EXPENSE**

Home Office Expense—(as per Defendants' Exhibits 19-B, 18C-1, 18C-2 and 18C-3)	\$1,304,984.38
Branch Offices Expense—Per Schedule	3,246,888.31
Franchise Offices Expense	277,707.19
Depreciation Branch Equipment—Per Schedule	48,151.63
Accounts Receivable Written Off	11,100.00
Rental Projection Facilities	46,318.47
Interest on Investment in Branch Office Equipment (Per Schedule)	20,375.62
	<u>\$4,955,525.60</u>

#### **LESS:**

Sales of Advertising Accessories	\$761,395.68
Cost of Same	428,902.03

Miscellaneous Income	\$332,493.65
	<u>7,473.46</u>

339,967.11

Total Distributing Expense (76.87% of  
Net Film Rental Income)

\$4,615,558.49

# **Defendants' Exhibit 19-B.**

2383

## **METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION**

### **HOME OFFICE EXPENSES OF METRO-GOLDWYN PICTURES CORP. & METRO-GOLDWYN-MAYER DIST. CORP.**

**YEAR ENDED AUGUST 31, 1932.**

Salaries—General (as per Schedules Ex. 18-C1, 18-C2, 18-C3)	\$1,077,254.55
Rent and Light	108,921.58
Advertising	94,844.29
General Expense	76,550.31
Telephone and Telegraph	64,075.25
Traveling	59,979.93
Stationery and Printing	46,084.00
Legal	56,552.02
Film Repairs and Maintenance	33,450.70
Office Supplies and Expense	27,560.63
Postage	25,560.00
Scenario	20,626.79
"The Distributor" (Magazine)	20,586.72
Branch Office Supplies and Expenses	19,051.45
Taxes	17,855.43
Branch Shipping Supplies and Expense	16,772.05
Sound Instruction	15,305.96
Exchange	15,143.35
Insurance	13,501.69
Accounting	13,016.50
Branch Stationery and Printing Expense	11,742.34
"Leo" (The Lion Tour)	9,248.52
Trackless Train	8,822.50
Shipping Supplies and Expense	6,904.27
Freight and Express	4,484.24
Sales Promotion	3,818.86
Branch Postage	2,479.71
Managers Convention	2,408.10

2384

2385

	\$1,872,601.74
Absorbed by Metro-Goldwyn Pictures Corp.	567,617.36

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**\$1,304,984.38**

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## Defendants' Exhibit 19-C.

METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION  
 BRANCH OFFICE EXPENSES  
 YEAR ENDED AUGUST 31, 1932

	Total	Managers	Salaries Salesmen	Others	Salaries and Expense District Managers	Exploitation	Traveling	Rent, Light and Heat	Express and Film Delivery	Telephone and Telegraph	Postage	Checking and Clocking	Stationery and Supplies
Albany	\$76,293.74	\$6,708.00	\$8,338.25	\$25,553.66		\$1,070.69	\$9,724.09	\$3,990.30	\$3,313.55	\$2,926.27	\$1,543.76	\$8,763.48	\$883.6
Atlanta	116,390.80	6,450.00	12,119.50	35,183.99	\$18,757.98	5,204.04	11,190.29	6,392.74	6,152.41	5,189.28	2,472.93	3,621.90	988.9
Boston	171,330.96	14,093.75	21,600.00	62,055.77	7.50	5,463.31	15,243.15	15,171.08	9,229.79	4,190.11	2,803.15	14,869.12	1,437.0
Buffalo	85,561.56	8,256.00	11,216.75	29,164.30		840.53	10,213.26	6,208.12	4,595.05	3,258.02	2,218.40	6,023.32	1,148.5
Charlotte	69,811.15	6,192.00	7,360.50	26,382.34		408.01	7,324.19	5,502.71	5,782.09	1,835.78	1,389.76	6,506.10	825.3
Chicago	201,366.30	11,610.00	17,097.70	71,752.15	22,730.38	8,541.74	10,182.04	17,066.19	16,226.08	5,728.88	3,452.49	9,044.31	2,048.4
Cincinnati	113,854.81	7,224.00	14,481.50	40,614.66		1,201.27	14,617.00	8,707.03	6,821.58	4,676.37	2,700.38	8,740.46	1,359.0
Cleveland	130,266.83	9,804.00	15,257.25	41,743.97		1,910.41	12,462.24	9,271.56	7,035.43	2,591.12	2,691.01	22,690.01	1,807.5
Dallas	101,542.79	8,514.00	15,426.00	38,750.91		1,435.39	14,318.77	7,684.35	6,793.66	2,075.51	2,713.22	773.82	1,134.3
Denver	74,059.24	5,195.00	9,907.50	27,797.71	18.00	159.61	10,993.29	5,271.05	4,419.42	3,720.59	1,569.65	1,666.80	1,152.4
Des Moines	65,943.48	7,740.00	9,665.00	22,587.63		331.14	7,925.16	6,290.09	3,521.50	1,884.60	1,219.07	2,511.27	567.9
Detroit	169,040.64	9,288.00	15,408.25	45,979.46	040.76	11,688.27	12,581.88	10,327.88	9,849.43	5,088.11	2,954.60	12,983.92	1,026.3
Indianapolis	93,643.01	9,030.00	11,944.50	30,278.56		632.91	8,897.93	10,244.18	5,898.40	3,076.32	1,055.37	9,314.09	1,002.6
Kansas City	139,848.58	7,740.00	16,500.50	41,562.28	20,674.62	4,596.50	15,027.52	8,524.78	7,952.61	3,987.94	2,916.56	5,532.63	1,428.5
Los Angeles	144,239.11	9,030.00	7,135.50	50,133.34	34,618.65	1,538.23	4,636.91	11,884.13	4,538.66	2,876.61	2,075.11	11,368.49	1,254.6
Memphis	55,398.88	6,708.00	5,324.33	20,640.82		267.91	6,989.93	4,624.30	3,057.69	2,065.85	1,489.45	1,516.38	968.3
Milwaukee	92,847.36	7,740.00	11,631.50	32,731.86		1,234.02	10,752.91	7,732.09	6,015.00	3,120.15	1,839.66	6,717.11	1,110.0
Minneapolis	108,598.77	8,514.00	17,728.00	40,030.48		1,215.99	16,909.00	4,195.98	6,620.94	2,750.23	2,417.45	3,599.83	860.9
New Haven	55,631.24	6,285.00	4,715.75	20,194.40		742.47	4,427.23	5,991.54	3,108.09	1,357.49	1,141.12	5,637.85	952.6
New Orleans	52,560.03	7,224.00	4,919.50	20,988.11		139.60	5,139.64	4,275.87	3,199.94	1,132.56	1,363.87	422.44	824.0
New York	296,707.65	14,448.00	14,989.75	118,219.57	17,140.43	2,400.55	8,214.48	33,981.15	11,875.28	5,544.91	2,436.80	52,914.66	2,773.0
Oklahoma City	62,757.59	7,740.00	7,845.00	23,504.64		418.28	8,061.58	4,314.86	4,063.05	1,827.90	1,015.88	608.41	455.1
Omaha	80,830.42	5,676.00	12,295.00	26,446.40		671.52	12,786.45	4,884.79	4,880.03	2,791.39	1,459.44	6,095.20	884.3
Pittsburgh	131,123.84	7,224.00	17,022.00	42,936.86		1,674.49	14,885.62	10,283.74	6,700.63	2,633.77	2,775.57	20,743.33	1,560.6
Portland	55,267.35	6,450.00	5,836.00	19,761.06		538.28	7,222.32	3,637.75	2,654.47	2,536.64	1,133.16	2,478.24	1,056.7
Salt Lake City	89,158.96	5,195.00	11,259.50	30,057.86		29.65	17,234.62	3,948.18	7,211.64	4,407.28	1,396.73	5,320.63	1,071.3
San Francisco	96,746.12	10,320.00	8,237.00	41,240.69	98.41	211.93	8,075.43	9,257.88	6,470.19	3,055.43	1,492.98	4,767.31	792.4
Seattle	66,379.20	6,450.00	7,552.50	21,514.42	16.60	1,109.76	8,125.00	4,385.02	3,578.20	3,908.70	1,487.10	2,349.37	914.8
St. Louis	117,817.10	12,178.50	12,711.50	47,439.97		525.25	13,007.94	9,088.74	7,763.05	3,511.85	851.72	7,156.47	908.0
Washington	131,870.80	9,288.00	13,402.50	48,129.43		4,871.29	10,138.36	7,329.44	6,255.88	3,761.83	2,493.36	22,364.76	834.8

Per Exhibit

"D"

\$3,246,888.31 \$248,315.25 \$348,928.53 \$1,145,377.30 \$143,103.33 \$64,073.04 \$317,308.23 \$250,467.52 \$183,283.74 \$95,511.55 \$58,567.75 \$267,101.71 \$34,012.90

(Figures in italics were red in original.)



## Defendants' Exhibit 19-C.

## METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION

BRANCH OFFICE EXPENSES  
YEAR ENDED AUGUST 31, 1932

Expense	Travelling	Rent, Light and Heat	Express and Film Delivery	Telephone and Telegraph	Postage	Checking and Clocking	Stationery and Supplies	Alterations, Repairs, etc.	Film Maintenance and Repairs	Taxes Local and State	Projection Expense	Supper Money	Advertising	General Expense
070.69	\$9,724.09	\$3,990.30	\$3,313.55	\$2,926.27	\$1,543.76	\$8,763.48	\$883.69	\$1,933.48			\$475.50	\$45.00		\$1,024.02
204.04	11,190.29	6,392.74	6,152.41	5,189.28	2,472.93	3,621.90	998.90	14.00	\$3.30	\$2,808.96	330.42			1,506.76
463.31	15,243.15	15,171.08	9,229.79	4,190.11	2,803.15	14,869.12	1,437.00	52.00		1,024.67	824.50	649.50		2,616.56
840.53	10,213.26	6,208.12	4,595.05	3,258.02	2,218.40	6,023.32	1,148.57	75.00			664.90	1.50		1,677.84
408.01	7,324.19	5,502.71	5,782.09	1,835.78	1,389.76	6,506.10	825.35		10.20	1,175.76	224.90	106.00		785.46
541.74	10,182.04	17,066.19	16,226.08	5,728.88	3,452.49	9,044.31	2,048.47		630.11	722.88	1,079.10	5.50		3,448.28
201.27	14,617.00	8,707.03	6,821.58	4,676.37	2,700.38	8,740.46	4,359.03			60.00	673.83	154.00		1,823.70
910.41	12,462.24	9,271.56	7,035.43	2,591.12	2,691.01	22,690.01	1,807.58	32.00		57.05	667.25	140.00		2,105.95
435.39	14,318.77	7,684.35	6,793.66	2,075.51	2,713.22	773.82	1,134.34		5.05	398.56	258.50			1,260.71
159.61	10,993.29	5,271.05	4,419.42	3,720.59	1,569.65	1,666.80	1,152.40	183.77	9.60	290.56	816.50	75.00		842.79
331.14	7,925.16	6,290.09	3,524.50	1,884.60	1,219.07	2,511.27	567.97	47.80		420.71	658.00			573.54
688.27	12,581.88	10,327.88	9,849.43	5,088.11	2,954.60	12,983.92	1,026.36			408.50	730.09	53.00		1,632.13
632.94	8,897.93	10,244.18	5,898.40	3,076.32	1,055.37	9,314.09	1,002.60	120.75	15.05	670.72	313.50		\$10.00	1,138.13
596.50	15,027.52	8,524.78	7,952.61	3,987.94	2,916.56	5,532.63	1,428.57			484.05	1,467.00	14.00		4,439.02
538.23	4,636.91	11,884.13	4,538.66	2,876.61	2,075.11	11,368.49	1,254.68		69.76	1,016.87	100.00		17.00	1,945.17
267.91	6,989.93	4,624.30	3,057.69	2,065.85	1,489.45	1,516.38	968.30	13.50	4.54	503.14	277.00			947.74
234.02	10,752.91	7,732.09	6,015.00	3,120.15	1,839.66	6,717.11	1,110.07	182.42		271.18	753.87			1,015.52
215.99	16,909.00	4,195.98	6,620.94	2,750.23	2,417.45	3,599.83	860.95		278.15	783.79	770.45	55.00	353.99	1,514.54
742.47	4,427.23	5,991.54	3,108.09	1,357.49	1,141.12	5,637.85	952.62			262.13	24.00	40.00		751.55
139.60	5,139.64	4,275.87	3,199.94	1,132.56	1,363.87	422.44	824.06	48.83		1,878.06	51.00			952.55
400.55	8,214.48	33,981.15	11,875.28	5,544.91	2,436.80	52,914.66	2,773.06	181.80	4,204.05	1.05	15.29	1,115.00		6,251.82
418.28	8,061.58	4,314.86	4,063.05	1,827.96	1,015.88	608.41	455.16			295.91	17.00			589.86
671.52	12,786.45	4,844.79	4,880.03	2,791.39	1,459.44	6,095.20	884.35	273.20	1.40	252.24	559.84			875.97
671.49	11,885.62	10,283.74	6,700.63	2,633.77	2,775.57	20,743.33	1,560.62	81.90	175.00	198.31	406.50	94.45		1,729.05
338.28	7,222.32	3,637.75	2,654.47	2,536.64	1,133.16	2,478.24	1,056.73			589.22	665.00	5.00	88.96	614.52
29.65	17,234.62	3,948.18	7,211.64	4,407.28	1,396.73	5,320.63	1,071.33			281.73	795.50			949.31
211.93	8,075.43	9,257.88	6,470.19	3,056.43	1,492.98	4,767.31	792.48	34.50		623.04	381.50		217.45	1,469.90
109.76	8,125.00	4,385.02	3,278.20	3,908.76	1,487.10	2,349.37	914.82	68.00	18.90	584.36	416.70		180.43	1,057.12
225.25	13,007.94	9,088.74	7,763.05	3,511.85	851.72	7,156.47	908.02	97.50	2.64	348.31	685.75	117.38	19.00	1,403.51
871.29	10,138.36	7,329.44	6,255.88	3,761.83	2,493.36	22,364.76	834.88	65.87		193.19	310.53	136.00	669.23	1,626.25
073.04	\$317,308.23	\$250,467.52	\$183,283.74	\$95,511.55	\$58,567.75	\$267,101.71	\$34,042.96	\$3,506.32	\$5,380.55	\$16,604.95	\$15,413.92	\$2,806.33	\$1,556.06	\$45,539.27

(Figures in italics were red in original.)

## Defendants' Exhibit 19-D.

2389

METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION  
 DEPRECIATION—BRANCH EQUIPMENT  
 YEAR ENDED AUGUST 31, 1932

New York	\$ 4,223.08
Buffalo	890.43
Boston	2,714.61
Washington	1,386.41
Pittsburgh	1,636.68
Cincinnati	1,513.64
Cleveland	1,578.56
Kansas City	4,600.52
Omaha	672.62
Minneapolis	747.26
Chicago	3,657.97
Dallas	1,127.93
San Francisco	1,336.66
Los Angeles	1,668.73
Seattle	649.94
Salt Lake City	885.41
Denver	1,199.01
Detroit	1,261.75
Atlanta	3,696.81
New Orleans	390.60
St. Louis	1,548.67
Oklahoma City	1,153.16
Indianapolis	1,572.90
Milwaukee	1,889.63
Portland	1,076.45
New Haven	948.95
Albany	1,237.71
Charlotte	1,337.76
Des Moines	1,366.97
Memphis	988.00
Philadelphia	2,192.81

2390

2391

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\$48,151.63



## Defendants' Exhibit 19-E.

**METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION**  
**INTEREST ON INVESTMENT IN BRANCH OFFICE EQUIPMENT**  
**YEAR ENDED AUGUST 31, 1932.**

Branch	At August 31, 1931.			At August 31, 1932.		
	Cost	Reserve	Net	Cost	Reserve	Net
New York	\$ 76,154.86	43,221.22	32,933.64	77,625.41	47,444.30	30,181.11
Buffalo	18,658.55	11,712.18	6,946.37	18,706.80	12,602.61	6,104.19
Boston	54,744.72	33,590.89	21,153.83	55,188.82	36,305.50	18,883.32
Washington	26,443.56	16,601.57	9,841.99	26,633.26	17,987.98	8,645.28
Pittsburgh	31,234.02	18,828.28	12,425.74	35,189.39	20,464.96	14,724.43
Cincinnati	21,096.72	10,329.85	10,766.87	21,145.31	11,843.49	9,301.82
Cleveland	24,073.67	11,904.89	12,168.78	24,227.50	13,483.45	10,744.05
Kansas City	27,506.40	14,665.57	12,840.83	27,753.25	16,266.09	11,487.16
Omaha	13,442.29	7,733.27	5,709.02	15,199.42	8,405.89	6,793.53
Minneapolis	15,674.94	10,545.65	5,129.29	15,728.34	11,292.91	4,435.43
Chicago	62,011.74	29,168.15	32,843.59	62,528.77	32,826.12	29,702.65
Dallas	17,568.62	9,459.19	8,109.43	17,619.27	10,587.12	7,032.15
San Francisco	20,923.59	9,896.99	11,026.60	21,062.74	11,233.65	9,829.09
Los Angeles	21,936.31	9,553.35	12,402.96	22,448.26	11,222.08	11,226.18
Seattle	13,673.87	9,046.97	4,626.90	13,635.27	9,696.91	3,938.36
Salt Lake City	13,303.25	6,821.22	6,484.03	13,300.95	7,706.63	5,594.32
Denver	17,916.49	8,035.31	9,881.18	17,984.84	9,234.32	8,750.52
Detroit	20,324.53	12,000.57	8,323.96	20,354.03	13,262.32	7,091.71
Atlanta	31,009.87	9,567.92	21,441.95	31,063.77	13,264.73	17,799.04
New Orleans	9,065.76	6,232.36	2,833.40	9,174.36	6,622.96	2,551.40
St. Louis	20,659.07	8,502.13	12,156.94	20,699.97	10,050.80	10,649.17
Oklahoma City	11,531.56	5,357.47	6,174.09	11,614.96	6,510.63	5,104.33
Indianapolis	15,728.97	4,952.99	10,775.98	15,809.87	6,525.89	9,283.98
Milwaukee	18,896.08	5,613.71	13,282.37	18,936.98	7,503.34	11,433.64
Portland	10,764.62	2,706.55	8,058.07	10,855.57	3,783.00	7,072.57
New Haven	9,489.42	3,213.89	6,275.53	9,530.32	162.84	9,367.48
Albany	12,377.11	6,036.37	6,340.74	12,951.58	7,274.08	5,677.50
Charlotte	13,377.60	4,583.15	8,794.45	13,478.80	5,920.91	7,557.89
Des Moines	13,670.44	4,398.59	9,271.85	13,804.49	5,765.56	8,038.93
Memphis	9,879.93	2,997.88	6,882.05	9,960.03	3,985.88	5,974.15
Philadelphia	31,214.54	9,286.40	21,928.14	31,840.84	11,479.21	20,361.63

Totals—

\$704,394.90

\$346,564.53

\$357,830.37

\$716,073.17

\$394,716.16

\$321,357.01

357,830.37

\$679,187.38

Average (1 1/2)

\$339,593.69

Interest at 6%

20,375.62

**Defendants' Exhibit 20.****CULVER EXPORT CORPORATION  
NET INCOME FROM "LETTY LYNTON"**

2395

Film Rental Income by Foreign Subsidiaries	\$417,986.41
Film Rental Income—Direct	2,876.10

Film Rental Income	\$417,862.51
Less: Retained by Foreign Subsidiaries	142,339.84

Culver Share Film Rental	\$275,522.67
Distributing Expense—4.55% of Same	12,536.28

	262,986.39
Total Production Cost	195,560.42

Net Income From "Letty Lynton"	\$67,425.97	
Less Federal Income Taxes (14½%)	9,776.76	2396
	<u>\$57,649.21</u>	

**Defendants' Exhibit 20-A.****CULVER EXPORT CORPORATION  
TOTAL DISTRIBUTING EXPENSE RATIO TO FILM RENTAL INCOME  
YEAR ENDED AUGUST 31, 1933.**

Film Rental Income	\$15,563,592.34
Less: Retained by Foreign Distributors	4,933,162.64

Net Film Rental Income:	\$10,630,429.70	2397
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**DISTRIBUTING EXPENSE**

Home Office Expense—Per Schedule	\$470,951.78
Accounts Receivable Written Off	6,803.91
Taxes Paid Foreign Governments—Per Schedule	18,910.14

	\$496,665.83
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LESS:	
Profits on Foreign Exchange	\$2,759.75
Miscellaneous Income	9,847.93

	12,607.68
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Total Distributing Expense (4.55% of Net Film Rental Income)	\$484,058.15
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2398

**Defendants' Exhibit 20-B.****CULVER EXPORT CORPORATION****SUNDRY SCHEDULES**

Year Ended August 31, 1933

**HOME OFFICE EXPENSES**

Salaries, Per Schedule	\$302,419.76
Rent and Light	11,861.00
Advertising	19,073.53
General Expense	4,174.30
Telephone and Telegraph	1,334.22
Traveling	45,363.14
Stationary & Printing	3,136.89
Legal	4,819.47
Film Repairs and Maintenance	1,200.79
Office Supplies and Expense	2,630.61
Taxes	52,420.52
Insurance	556.50
Shipping Supplies and Expense	229.83
Freight and Express	1,459.56
Commissions	17,271.66

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 \$470,951.78
**TAXES PAID-FOREIGN GOVERNMENTS**

Australia	251.69
Belgium	4,865.03
Mexico	7,265.21
Philippine Islands	77.88
France	6,450.33

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 \$18,910.14

2399

2400

## Defendants' Exhibit 20-C.

2401

CULVE EXPORT CORPORATION  
SALARIES  
Year Ended August 31st, 1933

Arthur M. Loew	\$155,500.00
Morton A. Spring	14,700.00
Ludwig L. Lawrence	38,000.00
D. Blum	10,106.28
Sam Burger	5,200.00
Arthur Fiedelbaum	14,100.00
H. F. Kreeke	8,820.00
H <sup>c</sup> . C. Kleindienst	4,300.00
Paul H. Cohen	4,300.00
Robt. M. W. Vogel	4,300.00
Henry H. Eckman	1,200.00
P. N. Brinch	3,250.00
Arthur Sterling	2,340.00
Lillian Reiss	2,470.00
Norman Ogilvie	2,223.00
Melita J. Schmitt	2,223.00
Margaret Hill	1,976.00
Annette Miller	1,877.20
Louis Hershkowitz	1,729.00
Carmen De Pinillos	1,976.00
Kate Seidman	1,729.00
Rosa Lewis	1,729.00
Agnes V. Carroll	1,383.20
Gertrude Grumwaldt	1,482.00
Rose Isaacs	1,482.00
Orita Lage	1,383.20
Morris Frantz	1,235.00
Jeanne Rondot	1,235.00
Mary Wright	1,235.00
Helen Hauck	1,086.80
Anita Johns	1,037.40
Irving Frantz	839.80
Paul T. Lee	900.00
Various	5,071.88

2402

2403

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\$302,419.76

2404

**Defendants' Exhibit 20-D.**

**CULVER EXPORT CORPORATION**  
**COST OF PRODUCTION**  
**"LETTY LYNTON"**

**NEGATIVE COST**

English Version (25% from Metro-Goldwyn Picture Corp'n.)		\$106,582.99
German	"	\$12,600.50
French	"	13,619.33
Italian	"	10,741.10
		<hr/> 36,960.93
		<hr/> \$143,543.92

2405

**PRINTS**

French Version	7,373.18	
German	"	9,801.95
Italian	"	3,592.79
Spanish	"	2,275.70
English	"	22,001.90
		<hr/> 45,045.52
E.R.P.I.—Royalty	3,456.00	
German Electric Co. Royalty	2,468.00	
Music Royalty	1,046.98	6,970.98
		<hr/>
Total Production Cost Culver Export Corporation:		\$195,560.42

2406

# **Defendants' Exhibit 21.**

2407

## **FOREIGN SUBSIDIARIES NET INCOME FROM "LETTY LYNTON"**

Film Rental Income (Per Schedule)	\$414,986.41
Less Culver Export Corp. Share (Per Schedule)	272,646.57

Net Film Rental Income (Per Schedule)	\$142,339.84
Distributing Expense	84,260.05

	\$58,079.79
Less Minority Interest Share—Sweden	526.52

	\$57,553.27
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Cost of Prints—England	\$6,619.27
Cost of Negative—Spanish Version	7,638.94

2408

	14,258.21
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Net Income from "Letty Lynton"	\$43,295.06
Less Federal Income Taxes—14½%	6,277.78

	\$37,017.28
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2409



# Defendants' Exhibit 21-A1.

## FOREIGN SUBSIDIARIES

NET INCOME ATTRIBUTED TO "LETTY LYNTON" (FOREIGN VERSIONS  
SHOWING DISTRIBUTION OF PROFIT OF FOREIGN SUBSIDIARIES BY COUNTRY  
(Based on 1933 Percentage of Distributing Expense)

	1. Gross Rentals	2. Distributing Per Cent. (Per Schedule)	3. Expense Amount (Col. 2 x Col. 1)	4. Amount Retained by Subsidiary	5. Profit or Loss Foreign Company (Col. 4 minus Col. 3)
Austria	\$ 4,339.75	34.80	\$ 1,510.23	\$ 1,735.91	\$ 225.68
Belgium	16,919.27	12.76	2,158.90	3,111.76	952.86
Egypt	1,130.69	15.42	174.35	282.66	108.31
Finland	8.88	35.21	3.12	3.11	0.01
France	42,955.42	25.45	10,932.15	19,692.62	8,760.47
Germany	258.25	30.37	78.43	136.90	58.47
Greece	531.33	31.63	168.06	161.53	6.53
Guatemala	87.47	41.42	36.23	30.61	5.62
Holland	4,007.87	22.28	892.95	985.26	92.31
Hungary	2,562.44	27.31	699.80	896.84	197.04
Italy	41,270.53	18.60	7,676.32	10,346.33	2,670.01
Jugo Slavia	1,399.70	87.77	1,228.52	629.86	598.84
Latvia	929.55	39.55	367.64	373.71	6.07
Panama	20.51	26.29	5.39	3.07	2.32
Portugal	271.81	23.73	64.50	95.11	30.61
Roumania	1,932.58	33.97	656.50	483.14	173.36
Spain	18,679.89	25.02	4,673.71	8,603.14	3,929.43
Switzerland	7,475.41	18.16	1,357.53	1,868.87	511.34
Turkey	1,225.00	26.06	319.24	367.50	45.26
Venezuela	575.06	31.17	179.25	226.75	47.50
Sundries	\$146,581.41	22.64	\$33,182.82	\$ 50,034.68	\$16,851.86
TOTAL—Foreign Versions	\$446,752.03		\$33,221.45	\$ 50,265.20	\$17,043.72
Total—English Versions	268,234.38		51,038.60	92,074.61	41,036.77
	\$414,986.41		\$84,260.05	\$142,339.81	\$58,080.49
Less—Minority Interest—Sweden					520.00

(Words and figures in italics were red in original.)

## Defendants' Exhibit 21-A2.

## FOREIGN SUBSIDIARIES

2413

NET INCOME ATTRIBUTED TO "LETTY LYXTON" (ENGLISH VERSIONS)  
 SHOWING DISTRIBUTION OF PROFIT OF FOREIGN SUBSIDIARIES BY COUNTRIES  
 (Based on 1933 Percentage of Distributing Expense)

	1. Gross Rentals	2. Distributing Expense Per Cent. (Per Schedule)	3. Expense Amount (Column 2 x Column 1)	4. Amount Retained by Subsidiary	5. Profit-Loss Foreign Company (Column 4 minus Column 3)
Argentina	\$ 14,298.45	24.58	\$ 3,514.56	\$ 3,691.79	\$ 177.23
Australia	24,294.83	24.92	6,054.27	9,687.08	3,632.81
Belgium	90.98	12.76	11.61	22.74	11.13
British West Indies	576.23	32.40	186.70	225.23	38.53
Brazil	10,181.86	22.37	2,277.68	3,054.54	776.86
Chile	1,586.74	25.49	404.46	476.00	71.54
China	1,863.77	18.63	347.22	559.13	211.91
Colombia	950.76	32.01	304.34	332.76	28.42
Cuba	3,239.80	41.06	1,330.26	1,152.26	178.00
Denmark	1,146.83	15.42	176.84	401.43	224.59
Dutch East Indies	2,092.26	38.29	801.13	762.69	38.44
Egypt	5,311.60	15.42	819.05	1,327.87	508.82
Finland	1,483.07	35.21	522.19	543.30	21.11
Great Britain	144,412.94	13.25	19,134.71	50,567.94	31,433.23
Greece	1,500.49	31.63	474.60	518.70	44.10
Guatemala	1,440.94	41.42	596.84	504.30	92.54
Hungary	77.58	27.31	21.19	27.16	5.97
India	5,508.97	18.62	1,025.77	1,652.71	626.94
Italy	552.14	18.60	102.70	193.25	90.55
Japan	825.63	35.21	290.70	288.96	7.74
Mexico	5,068.98	47.30	2,397.63	1,788.59	609.04
Norway	2,201.80	26.05	573.57	879.07	305.50
Panama	1,469.27	26.29	386.27	587.71	201.44
Peru	1,686.89	22.03	371.62	506.03	134.41
Philippines	3,120.55	24.88	776.39	916.02	139.63
Poland	7,489.87	29.25	2,190.79	2,625.09	434.30
Portugal	1,197.69	23.73	284.21	419.19	134.98
Puerto Rico	1,910.84	37.20	710.83	764.32	53.49
Roumania	2,068.85	33.97	702.79	517.20	185.59
South Africa	5,688.39	19.37	1,101.84	1,122.12	320.28

2414

2415

## Defendants' Exhibit 21-A2.

	1. Gross Rentals	2. Distributing Per Cent. (Per Schedule)	3. Expense Amount (Column 2 x Column 1)	4. Amount Retained by Subsidiary	5. Profit-Loss Foreign Company (Column 4 minus Column 3)
Spain	4,015.33	25.02	1,004.64	1,765.31	760.67
Straits Settlements	1,016.28	26.46	268.91	355.67	86.76
Venezuela	1,181.61	31.17	368.31	418.33	50.02
<b>TOTAL—Wholly Owned Sub- sidiaries</b>	<b>\$259,552.22</b>		<b>\$49,534.62</b>	<b>\$88,954.49</b>	<b>\$39,419.87</b>
Sweden (Partly Owned Sub- sidiary)	6,152.26	16.60	1,021.28	2,153.30	1,132.02
	<b>\$265,704.48</b>		<b>\$50,555.90</b>	<b>\$91,107.79</b>	<b>\$40,551.89</b>
Sundries	2,529.90	19.08	482.70	966.85	484.15
	<b>\$268,234.38</b>		<b>\$51,038.60</b>	<b>\$92,074.64</b>	<b>\$41,036.04</b>
<b>Less—100 215—Sweden— To Minority Interest</b>					<b>526.52</b>
					<b>\$40,509.52</b>

(Words and figures in italics were red in original.)

## FOREIGN COMPANIES

## TOTAL DISTRIBUTING EXPENSE RATIO TO FILM RENTAL INCOME

Year Ended August 31, 1933

	M-G-M de la Argentina (Argentina)	M-G-M Ltd. (Australia and New Zealand)	M-G-M Films G.m.b.H. (Austria)	M-G-M S. A. Belge (Belgium)	M-G-M of West Indies (British West Indies)	M-G-M de Brazil (Brazil)	M-G-M de Chile (Chile)	M-G-M of China (China)	M-G-M de Colombia (Colombia)	M-G-M de Cuba S.A. (Cuba)	M-G-M A. S. (Denmark)
Film Rental Income	\$725,878.39	\$846,528.01	\$60,326.41	\$461,911.89	\$21,935.21	\$428,495.53	\$157,447.43	\$174,209.86	\$68,928.76	\$111,249.58	\$88,700.00
Distributing Expense:											
Salaries	\$ 87,032.97	\$101,703.59	\$ 9,861.24	\$ 21,270.77	\$ 3,932.25	\$ 49,293.83	\$ 13,198.55	\$ 17,116.73	\$10,717.11	\$ 25,831.00	\$11,330.00
Traveling, Entertaining and Auto Expense	9,928.78	14,135.95	2,076.26	3,880.58	413.22	4,077.30	1,542.11	3,527.23	2,860.18	1,514.21	1,415.00
Advertising	4,193.50	11,123.40	1,172.84	1,360.04	259.68	2,164.58	1,001.43	668.17	356.68	1,269.55	1,146.00
Rent, Heat, Light, Power, Cleaning, etc.	12,031.70	12,098.68	1,385.66	3,909.54	800.51	3,118.56	1,452.83	2,153.65	1,347.55	1,720.25	2,380.00
Printing and Stationery	3,045.30	3,723.52	452.73	797.30	385.50	1,582.50	742.90	642.65	654.92	1,051.72	610.00
Postage, Telegraph, Cables and Telephone	5,756.04	7,810.79	1,094.92	906.74	239.39	2,773.95	1,322.54	2,168.28	1,390.25	626.52	900.00
Repairs and Maintenance	1,497.98	2,137.41	474.32	779.70	13.42	1,468.05	125.45	161.44	55.20	540.66	110.00
Cartage, Freight, etc.	10,992.16	5,825.82	41.72	104.86	43.76	1,592.53	652.15	1,407.70	963.67		480.00
Legal and Auditing	1,834.12	2,779.67	472.23	2,061.60	715.49	1,813.31	682.03	694.81	787.26	540.70	500.00
Insurance	67.90	409.01	677.82	1,408.27		204.82	193.92	81.77		123.97	90.00
Commissions		63.84	579.45	765.34		2,196.52					600.00
New York Overhead Charged (Salaries and Traveling—Field Supervisors)	2,423.51		21.01	8,532.85	22.66	22,247.60	3,539.83	4,289.74	385.30		240.00
General Expenses	2,768.59	2,032.74	306.09	383.41	171.40	4,586.57	426.34	684.84	564.71	293.50	100.00
Taxes	9,070.25	32,508.65	982.41	9,955.83		4,057.55	3,980.72	13.08	275.68	5,222.56	700.00
Depreciation	7,035.43	4,956.71	1,644.87	2,168.30	774.83	5,216.99	1,473.60	565.05	421.41	400.79	700.00
Accounts Receivable Written Off		3.23	439.44	327.81				89.82		67.07	
Foreign Exchange and Bank Charges— Local	50.41	23,412.84	244.22	1,833.32	971.52	1,387.49	58.07	173.94	293.25	645.47	100.00
Checking Expense	17,908.67	185.70	26.44	709.10	406.92	5,780.74	2,548.12	444.68	1,886.20	5,269.26	100.00
	\$175,634.31	\$227,783.57	\$21,577.79	\$ 60,290.02	\$ 7,207.51	\$112,562.89	\$ 32,950.56	\$ 34,536.63	\$22,956.37	\$ 44,985.09	\$23,500.00
Less:											
Profit on Outside Producers' Pictures		\$ 846.00	\$ 70.05	\$ 126.19		\$ 132.22					\$ 9.10
Profit on Sale of Advertising Accessories	\$ 3,944.33	14,645.98	152.99	1,227.01	\$ 54.68	3,121.04	\$ 7,206.26	\$ 2,081.88	\$ 714.02	\$ 725.10	400.00
Other Income	249.83	1,330.30			45.44		29.67		175.08	33.98	300.00
	\$ 2,794.50	\$ 16,862.28	\$ 299.91	\$ 1,353.20	\$ 99.82	\$ 3,253.26	\$ 7,176.59	\$ 2,081.88	\$ 889.10	\$ 691.12	\$ 980.00
Total Distributing Expense	\$178,428.81	\$210,921.29	\$20,994.85	\$ 58,936.82	\$ 7,107.69	\$109,309.63	\$ 40,127.15	\$ 32,454.75	\$22,067.27	\$ 45,676.21	\$13,000.00
Percentage Distributing Expense of Film Rental Income	24.58	24.92	34.80	12.76	32.40	22.37	25.49	18.63	32.01	41.06	15.00

(Figures in italics were red in original.)



# Defendants' Exhibit 21-B1.

## FOREIGN COMPANIES

### TOTAL DISTRIBUTING EXPENSE RATIO TO FILM RENTAL INCOME

Year Ended August 31, 1933

M-G-M de la Argentina (Argentina)	M-G-M Ltd. (Australia and New Zealand)	M-G-M Films G.m.b.H. (Austria)	M-G-M S. A. Belge (Belgium)	M-G-M of West Indies (British West Indies)	M-G-M de Brazil (Brazil)	M-G-M de Chile (Chile)	M-G-M of China (China)	M-G-M de Colombia (Colombia)	M-G-M de Cuba S.A. (Cuba)	M-G-M A. S. (Denmark)	M-G-M Oriental Inc. (Dutch East Indies)	M-G-M of Egypt (Egypt)	O. Y. M-G-M Films O. P. (Finland)
\$5,878.39	\$846,528.01	\$60,326.41	\$461,911.89	\$21,935.21	\$428,495.53	\$157,447.43	\$174,209.86	\$68,928.76	\$111,249.58	\$88,701.15	\$128,836.91	\$143,183.56	\$77,557.91
7,032.97	\$101,703.59	\$ 9,861.24	\$ 21,270.77	\$ 3,932.25	\$ 49,293.83	\$ 13,198.55	\$ 17,116.73	\$10,717.11	\$ 25,831.00	\$11,338.37	\$ 24,982.91	\$ 7,821.72	\$15,736.52
9,928.78	11,135.95	2,076.26	3,880.58	413.22	4,077.30	1,512.11	3,527.23	2,860.18	1,514.21	1,158.46	4,339.44	1,703.32	1,775.49
1,193.50	11,123.10	1,172.84	1,360.04	259.68	2,164.58	1,001.43	668.17	356.68	1,269.55	1,467.30	1,525.11	302.99	674.62
2,031.70	12,098.68	1,385.66	3,909.54	800.51	5,118.56	1,152.83	2,153.65	1,347.55	1,720.25	2,383.10	2,078.32	1,046.73	2,127.38
3,045.30	3,723.52	452.73	797.30	385.50	1,582.50	742.90	642.65	651.92	1,051.72	613.55	815.48	337.24	253.51
5,756.04	7,810.79	1,094.92	906.71	239.39	2,773.95	1,322.51	2,168.28	1,390.25	626.52	968.58	3,537.02	1,030.85	916.19
1,497.98	2,137.41	474.32	779.70	13.42	1,468.05	125.45	461.44	55.20	540.66	111.87	97.56	296.19	168.00
0,992.16	5,825.82	41.72	104.86	43.76	1,592.53	652.15	1,407.70	963.67	487.72	1,115.54	80.65	488.39	
1,831.12	2,779.67	472.23	2,061.60	715.49	1,813.31	682.03	694.84	787.26	540.70	564.42	4,149.25	30.93	1,619.99
67.90	409.01	677.82	1,408.27		204.82	193.92	81.77		123.97	95.85	24.32	59.83	76.52
	63.84	579.45	765.34		2,196.52					698.15			
2,423.51		24.01	8,532.85	22.66	22,247.60	3,539.83	4,289.74	385.30		2,441.30		7,651.84	2,529.62
2,768.59	2,032.74	306.09	383.41	171.10	1,586.57	436.34	684.84	564.51	293.50	165.94	5,756.30	1,542.80	39.97
9,070.25	32,508.65	982.41	9,955.83		4,057.55	3,980.72	13.08	275.68	5,222.56	78.20	101.26		2,417.72
7,035.43	1,956.71	1,644.87	2,168.30	774.83	5,216.99	1,473.60	565.05	421.41	400.79	761.23	575.81	1,103.17	821.11
	3.23	439.44	327.81				89.82		67.07				
50.41	23,412.84	244.22	1,833.32	977.52	1,387.49	58.07	173.07	293.25	647.47	13.37	75.56	52.17	305.72
7,908.67	185.70	26.44	709.10	406.92	5,780.74	2,548.12	444.68	1,886.20	5,269.26	178.94	774.06	193.98	
5,634.31	\$227,783.57	\$21,077.79	\$ 60,290.02	\$ 7,207.51	\$112,562.89	\$ 32,950.56	\$ 34,536.63	\$22,956.37	\$ 44,985.09	\$23,529.35	\$ 46,996.85	\$ 23,192.55	\$28,362.86
	\$ 886.00	\$ 70.05	\$ 126.19		\$ 132.22					\$ 9,102.15	\$ 345.39	\$ 129.22	
3,044.43	11,645.98	152.99	1,227.01	51.68	3,121.04	7,206.26	2,081.88	714.02	725.10	422.15	2,875.10	927.50	976.23
249.83	1,330.30			45.14		29.67		175.08	33.98	331.72	195.73	51.94	79.59
2,794.50	\$ 16,862.28	\$ 82.94	\$ 1,353.20	\$ 99.82	\$ 3,253.26	\$ 7,176.59	\$ 2,081.88	\$ 889.10	\$ 691.72	\$ 9,856.02	\$ 2,333.98	\$ 1,111.66	\$ 1,055.82
\$428.81	\$210,921.29	\$20,994.85	\$ 58,936.82	\$ 7,107.69	\$109,309.63	\$ 40,127.15	\$ 32,454.75	\$22,067.27	\$ 45,676.21	\$43,673.33	\$ 49,330.83	\$ 22,080.89	\$27,307.04
24.58	24.92	34.80	12.76	32.40	22.37	25.49	18.63	32.01	41.06	15.42	38.29	15.42	35.21

(Figures in italics were red in original.)

**MICRO CARD**

**22**

TRADE MARK **®**

**39**



**1415**

**65**





# Defendants' Exhibit 21-B2.

## FOREIGN COMPANIES

### TOTAL DISTRIBUTING EXPENSE RATIO TO FILM RENTAL INCOME

Year Ended August 31, 1933

	M-G-M S. A. (France)	M-G-M Films A. G. (Germany)	M-G-M Pictures, Ltd. (Great Britain)	M-G-M Pictures Hellas (Greece)	Culver Export Corporation (Guatemala)	N/V M-G-M Films Co. (Holland)	M-G-M Distributing Corp. (Hungary)	M-G-M India, Ltd. (India)	S.A.I. M-G-M Films (Italy)	M-G-M Company, Ltd. (Japan)	M-G-M (J)
Film Rental Income	\$769,354.35	\$513,408.12	\$5,441,154.50	\$24,736.96	\$71,520.38	\$246,801.61	\$71,650.81	\$299,672.14	\$942,410.76	\$217,830.46	\$1
Distributing Expense:											
Salaries	\$106,759.75	\$ 75,240.31	\$266,457.54	\$ 4,580.13	\$16,404.00	\$ 20,835.10	\$ 9,161.30	\$ 23,323.35	\$ 86,925.02	\$ 27,412.82	\$
Traveling, Entertaining and Auto Expense	16,227.66	20,949.43	33,885.18	292.57	2,652.49	3,769.60	1,614.01	339.00	9,302.21	5,597.74	\$
Advertising	10,090.31	17,597.20	120,979.22	188.73	300.75	5,415.17	2,143.85	58.64	3,772.58	7,852.62	\$
Rent, Heat, Light, Power, Cleaning, etc.	11,326.76	12,276.10	34,938.89	586.83	972.45	3,976.95	1,194.39	3,404.96	15,247.21	5,861.97	\$
Printing and Stationery	3,159.15	2,147.34	11,398.71	151.48	857.94	629.92	528.19	1,302.92	2,503.16	1,280.88	\$
Postage, Telegraph, Cables and Telephone	8,062.15	8,566.94	16,332.73	255.12	1,352.35	1,802.10	1,127.09	4,190.58	4,910.20	3,626.03	\$
Repairs and Maintenance	1,656.90	1,216.44	7,110.42	45.17	114.13	260.70	330.60	389.32	935.24	508.84	\$
Cartage, Freight, etc.	6,324.79	3,878.96	18,780.08	69.71	1,186.29	2,955.50	416.56	215.76	1,810.10	3,018.07	\$
Legal and Auditing	2,851.44	1,648.40	6,723.35	551.41	287.50	1,049.06	1,189.50	977.39	2,299.25	994.94	\$
Insurance	3,046.49	3,934.10	7,145.81	9.18		343.83	524.54	202.64	1,506.01	188.60	\$
Commissions					839.94		237.74		3,874.49	564.55	\$
New York Overhead Charged (Salaries and Traveling—Field Supervisors)	7,234.44	2,575.30	27,830.18	598.43		14,356.33	988.34	8,709.93	9,366.56	9,838.66	\$
General Expenses	1,702.42	5,643.51	15,443.19	56.38	25.00	272.21	1,866.58	462.03	2,683.19	733.57	\$
Taxes	22,925.64	11,537.37	149,374.36	105.12	347.95	449.25	912.94	15,153.26	8,962.21		\$
Depreciation	14,006.01	7,758.72	25,470.49	460.52	1,097.96	1,896.91	1,990.73	4,430.08	6,933.45	3,201.66	\$
Accounts Receivable Written Off	4,608.00	5,424.24	2,989.68		281.21	46.31					\$
Foreign Exchange and Bank Charges—											\$
Local	86.07	5,099.83		64.62	103.57	966.79	1,890.13	180.15	2,255.68	38.50	\$
Checking Expense	26.89	19.56			414.86		507.01	117.09	6,782.39	4,044.76	\$
	\$210,301.89	\$164,465.61	\$740,880.47	\$ 8,015.10	\$27,238.39	\$ 57,029.53	\$26,623.50	\$ 63,025.58	\$170,068.95	\$ 74,764.21	\$
Less:											
Profit on Outside Producers' Pictures	\$ 1,735.18	\$ 3,119.25	\$ 27,315.50				\$ 5,511.09		\$ 368.92	\$ 21.65	\$
Profit on Sale of Advertising											\$
Accessories	15,840.78	5,031.62	46,622.10	37.40	2,321.69	2,043.76	1,393.43	7,067.66	5,032.50	2,565.26	\$
Other Income	384.58	379.29	376.21	229.32	139.36		148.03	166.47	144.86	600.54	\$
	\$ 14,490.18	\$ 8,530.16	\$ 49,682.81	\$ 191.92	\$ 2,382.33	\$ 2,043.76	\$ 7,052.55	\$ 7,234.13	\$ 5,256.56	\$ 1,943.07	\$
Total Distributing Expense	\$195,811.71	\$155,935.45	\$721,197.66	\$ 7,823.18	\$29,620.72	\$ 54,985.77	\$19,570.95	\$ 55,791.45	\$175,325.51	\$ 76,707.28	\$
Percentage Distributing Expense of Film Rental Income	25.45	30.37	13.25	31.63	41.42	22.28	27.31	18.62	18.60	35.21	

(Figures in Italics were red in original.)

## Defendants' Exhibit 21-B2.

Page #2

## FOREIGN COMPANIES

## TOTAL DISTRIBUTING EXPENSE RATIO TO FILM RENTAL INCOME

Year Ended August 31, 1933

M S I ny)	M-G-M Pictures, Ltd. (Great Britain)	M-G-M Pictures Hellas (Greece)	Culver Export Corporation (Guatemala)	N/V M-G-M Films Co. (Holland)	M-G-M Distributing Corp. (Hungary)	M-G-M India, Ltd. (India)	S.A.I. M-G-M Films (Italy)	M-G-M Company, Ltd. (Japan)	M.G.J.D.Z.P.F. (Jugo-Slavia)	Film Industrie A. G. M-G-M (Latvia)	M-G-M de Mexico (Mexico)	M-G-M A. S. (Norway)
8.12	\$5,441,154.50	\$24,736.96	\$71,520.38	\$246,801.61	\$71,650.81	\$299,672.14	\$942,410.76	\$217,830.46	\$16,659.96	\$50,903.58	\$288,424.03	\$70,369.20
10.31	\$266,457.54	\$ 4,580.13	\$16,404.00	\$ 20,835.10	\$ 9,161.30	\$ 23,323.35	\$ 86,925.02	\$ 27,412.82	\$ 6,907.79	\$ 8,871.62	\$ 56,629.60	\$ 6,880.55
9.43	33,885.18	292.57	2,652.49	3,769.60	1,614.01	339.00	9,302.21	5,597.74	1,674.03	1,535.76	40,241.90	1,726.87
7.20	120,979.22	188.73	300.75	5,415.17	2,143.85	58.64	3,772.58	7,852.62	378.16	391.17	12,656.37	1,591.44
6.10	34,938.89	586.83	972.45	3,976.95	1,194.39	3,404.96	15,247.21	5,861.97	1,389.76	2,797.09	4,404.06	1,251.85
7.34	11,398.71	151.48	857.94	629.92	528.19	1,302.92	2,503.16	1,280.88	454.77	372.72	3,627.78	450.15
6.94	16,332.73	255.12	1,352.35	1,802.10	1,127.09	4,190.58	4,910.20	3,626.03	1,105.17	1,092.88	6,259.08	1,114.04
6.44	7,110.42	45.17	114.13	260.70	330.60	389.32	935.24	508.84	116.27	386.16	2,022.64	242.05
8.96	18,780.08	69.71	1,186.29	2,955.50	416.56	275.76	1,810.10	3,018.07	526.26	1,739.16	10,579.86	161.83
8.40	6,723.35	551.41	287.50	1,049.06	1,189.50	977.39	2,299.25	994.94	1,012.83	1,099.76	1,950.03	220.00
4.10	7,145.81	9.18		343.83	524.54	202.64	1,506.01	188.60	195.97	301.63	132.38	92.94
			839.94		237.74		3,874.49	564.55		87.71	94.55	1,595.10
5.30	27,830.18	598.13		14,356.33	988.34	8,709.93	9,366.56	9,838.66	448.77	298.10	2.31	137.63
3.51	17,443.19	56.38	25.00	272.21	1,866.58	462.03	2,683.19	733.57	294.03	186.10	1,541.02	2,141.65
7.37	149,374.36	105.12	347.95	449.25	912.94	15,153.26	8,962.21		906.67	1,957.38	4,320.69	1,904.06
8.72	25,470.49	460.52	1,097.96	1,896.91	1,990.73	4,430.08	6,933.45	3,201.66	2,499.60	1,253.84	1,555.64	122.12
4.24	2,989.68		281.21	46.31					1,826.47		1,179.65	1,373.96
9.83		64.62	103.57	966.79	1,890.13	180.15	2,255.68	38.50	207.74	3,356.28	889.94	849.21
19.56			414.86		507.01	117.09	6,782.39	4,044.76		31.09	10,016.61	
5.61	\$740,880.47	\$ 8,015.10	\$27,238.39	\$ 57,029.53	\$26,623.50	\$ 63,025.58	\$170,068.95	\$ 74,764.21	\$15,238.83	\$19,045.89	\$128,104.08	\$18,863.29
9.25	\$ 27,315.50				\$ 5,511.09		\$ 368.92	\$ 21.65		\$ 16.63		
1.62	46,622.10	\$ 37.40	\$ 2,521.69	\$ 2,043.76	1,393.43	\$ 7,067.66	5,032.59	2,565.26	\$ 349.31	1,071.81	\$ 8,487.63	\$ 67.36
9.29	376.21	229.32	139.36		148.03	166.47	144.86	600.54	266.78		155.93	463.44
10.16	\$ 19,682.81	\$ 191.92	\$ 2,382.33	\$ 2,043.76	\$ 7,052.55	\$ 7,234.13	\$ 5,256.56	\$ 1,943.07	\$ 616.09	\$ 1,088.44	\$ 8,331.70	\$ 530.80
5.45	\$721,197.66	\$ 7,823.18	\$29,620.72	\$ 54,985.77	\$19,570.95	\$ 55,791.45	\$175,325.51	\$ 76,767.28	\$14,622.74	\$20,134.33	\$136,435.78	\$18,332.49
37	13.25	31.63	41.42	22.28	27.31	18.62	18.60	35.21	87.77	39.55	47.30	26.05

(Figures in italics were red in original.)



## Defendants' Exhibit 21-B3.

## FOREIGN COMPANIES

## TOTAL DISTRIBUTING EXPENSE RATIO TO FILM RENTAL INCOME

Year Ended August 31, 1933

	M-G-M de Panama (Panama)	M-G-M del Peru (Peru)	M-G-M Manila, Inc. (Philippines)	T/F M-G-M (Poland)	M-G-M de Puerto Rico (Porto Rico)	M-G-M Films Ltda. (Portugal)	M. G. Film S.A.R. (Roumania)	M-G-M Films S. A. Proprietary Ltd. (South Africa)	M-G-M Iberica S. A. (Spain)	M-G-M Oriental, Inc. (Singapore)	Filmactiebolag Le Mat M.G. Stockholm (Sweden)
Film Rental Income	\$61,379.97	\$85,974.92	\$143,365.48	\$136,037.52	\$77,099.71	\$50,034.72	\$97,386.80	\$276,958.86	\$649,570.06	\$65,545.37	\$281,304.63
Distributing Expense:											
Salaries	\$ 8,733.00	\$ 4,207.08	\$ 12,144.66	\$ 15,433.29	\$17,498.75	\$ 6,081.82	\$15,814.19	\$ 16,184.93	\$ 58,988.35	\$ 8,946.65	\$ 29,136.86
Traveling, Entertaining and Auto Expense	2,040.26	1,961.09	1,101.10	3,818.30	3,616.42	327.58	1,322.72	3,235.84	21,105.51	2,519.49	2,531.68
Advertising	216.22	707.97	651.56	1,000.62	155.00	335.84	1,112.02	693.61	11,089.60	114.37	13,415.79
Rent, Heat, Light, Power, Cleaning, etc.	1,392.65	621.51	1,174.65	1,781.83	1,374.38	564.27	1,906.24	2,827.60	5,250.53	1,218.80	3,843.20
Printing and Stationery	413.08	456.59	387.67	676.37	364.47	239.19	541.02	656.61	2,587.78	354.58	966.74
Postage, Telegraph, Cables and Telephone	724.41	870.40	1,313.54	1,716.26	927.80	352.57	1,399.39	2,909.10	6,800.51	1,322.58	2,682.86
Repairs and Maintenance		244.72	166.11	286.61	165.71	48.58	373.02	1,151.73	1,498.27	81.30	245.69
Cartage, Freight, etc.	27.41	318.18	1,003.12	624.00	1,055.18	402.10	103.04	1,236.72	6,264.46	30.21	1,163.84
Legal and Auditing	471.70	1,205.84	556.33	752.74	708.45	548.94	390.62	424.02	1,493.27	446.87	3,451.52
Insurance	20.00	28.68	88.48	1,422.42	8.48	134.23	132.92	111.10	1,534.34		153.32
Commissions		2,851.88	15.80	372.62	1,010.31		61.20		23.61		
New York Overhead Charged (Salaries and Traveling—Field Supervisors)		3,662.58	8,675.50	233.36		1,671.11	1,635.28	2,439.56	17,080.06		4,367.84
General Expenses	262.98	78.93	446.67	445.78	47.41	153.35	620.87	953.99	1,740.54	211.56	119.53
Taxes		215.06	1,378.72	7,338.46	714.46	1,340.27	4,964.64	20.35	47,237.77		17,184.30
Depreciation	625.73	269.18	60.95	5,317.37	345.12	636.56	2,397.23	22,504.39	1,423.39	593.95	1,519.83
Accounts Receivable Written Off			55.64	1,323.65		118.38	73.55	293.39	4,028.51		
Foreign Exchange and Bank Charges—											
Local	38.42	164.53	1,224.91	395.08	21.75	84.48	368.43	178.34	11,086.36	53.68	153.50
Checking Expense	366.50	1,621.45	3,146.56	178.29			566.65	148.22	257.10	370.61	911.07
	\$15,332.36	\$19,485.67	\$ 33,591.97	\$ 40,469.75	\$27,570.19	\$12,633.55	\$32,692.99	\$ 55,969.50	\$169,260.22	\$16,157.29	\$ 50,479.02
Less:											
Profit on Outside Producers' Pictures						\$ 109.02	\$ 935.63	\$ 2,269.03	\$ 8.36	\$ 11.08	\$ 1.93
Profit on Sale of Advertising											
Accessories	\$ 966.90	\$ 537.06	\$ 2,424.39	\$ 461.02	\$ 361.13	858.31	1,551.23	4,586.22	4,223.78	1,215.52	3,199.17
Other Income	161.92	8.79	346.89	213.78	250.00	11.70	223.39		2,527.97	20.85	585.53
	\$ 804.98	\$ 545.85	\$ 2,977.50	\$ 674.80	\$ 411.13	\$ 760.99	\$ 392.21	\$ 2,317.19	\$ 6,760.11	\$ 1,183.59	\$ 3,786.63
Total Distributing Expense	\$16,137.34	\$18,939.82	\$ 35,669.47	\$ 39,794.95	\$27,681.32	\$11,872.56	\$33,085.20	\$ 53,652.31	\$162,500.11	\$17,340.88	\$ 46,692.33
Percentage Distributing Expense of Film Rental Income	26.29	22.03	24.88	29.25	37.20	23.73	33.97	19.3	25.02	26.46	16.60

(Figures in italics were red in original)

## Defendants' Exhibit 21-B3.

Page #3

## FOREIGN COMPANIES

## TOTAL DISTRIBUTING EXPENSE RATIO TO FILM RENTAL INCOME

Year Ended August 31, 1933

M-G-M de Panama (Panama)	M-G-M del Peru (Peru)	M-G-M Manila, Inc. (Philippines)	T/F M-G-M (Poland)	M-G-M de Puerto Rico (Porto Rico)	M-G-M Films Ltda. (Portugal)	M. G. Film S.A.R. (Roumania)	M-G-M Films S.A. Proprietary Ltd. (South Africa)	M-G-M Iberica S. A. (Spain)	M-G-M Oriental Inc. (Singapore)	Filmactiebolaget Le Mat M.G. Stockholm (Sweden)	M-G-M S. A. Geneva (Switzerland)	M-G-M S. A. (Turkey)	M-G-M de Venezuela (Venezuela)
\$61,379.97	\$85,974.92	\$143,365.48	\$136,037.52	\$77,099.71	\$50,034.72	\$97,386.80	\$276,958.86	\$649,570.06	\$65,545.37	\$281,304.63	\$135,437.91	\$37,282.23	\$88,660.06
\$ 8,733.00	\$ 4,207.08	\$ 12,144.66	\$ 15,433.29	\$17,498.75	\$ 6,081.82	\$15,814.19	\$ 16,184.93	\$ 58,988.35	\$ 8,946.65	\$ 29,136.86	\$ 12,558.54	\$ 5,627.49	\$14,550.57
2,040.26	1,961.09	1,100.10	3,818.30	3,616.42	327.58	1,322.72	3,235.84	21,105.51	2,519.49	2,531.68	2,920.42	358.04	5,062.43
216.22	707.97	651.00	1,000.62	155.00	335.84	1,112.02	693.61	11,089.60	114.37	13,415.79	592.53	108.80	204.76
1,392.65	621.51	1,174.65	1,781.83	1,374.38	564.27	1,906.24	2,827.60	5,250.53	1,218.86	3,843.20	1,382.03	805.66	1,821.92
413.08	456.59	387.67	676.37	364.47	239.19	541.02	656.61	2,587.78	354.58	966.74	530.41	168.29	412.60
724.44	870.40	1,313.54	1,716.26	927.80	352.57	1,299.39	2,909.10	6,800.51	1,322.58	2,682.86	1,458.89	423.57	1,170.45
	244.72	166.11	286.61	165.71	48.58	373.02	1,151.73	1,498.27	81.30	245.69	291.63	168.71	73.37
27.41	318.18	1,003.12	624.00	1,055.18	402.10	103.07	1,236.72	6,264.46	30.21	1,163.84	388.24	268.85	1,354.67
471.70	1,205.84	356.33	752.74	708.45	548.94	390.62	424.02	1,493.27	446.87	3,451.52	1,109.86	407.64	243.20
20.00	28.68	88.48	1,422.42	8.48	134.23	132.92	111.10	1,534.34		153.32	226.84	27.67	56.54
	2,851.88	15.80	372.62	1,010.31		61.20		23.61					
	3,662.58	8,675.50	233.36		1,671.11	1,635.28	2,439.56	17,080.06		4,367.81	1,041.41	533.07	725.65
262.98	78.93	446.67	445.78	47.41	153.35	620.87	953.99	1,740.54	211.56	9.55	280.84	169.22	548.51
	215.06	4,378.72	7,338.46	714.46	1,340.27	4,984.64	20.35	47,237.77		14,184.30	294.78	293.94	265.30
625.73	269.18	60.95	5,317.37	345.12	636.56	2,397.23	22,504.39	1,423.39	593.95	1,519.83	876.65	506.18	377.77
		55.64	1,323.65		118.38	73.55	293.89	4,028.51					
38.42	164.53	1,224.91	395.08	424.75	84.48	368.43	178.34	11,086.36	53.68	153.56	107.88	24.81	1,256.85
366.50	1,621.45	3,146.56	178.29		566.65		148.22	257.10	370.61	911.08			998.60
\$15,332.36	\$19,485.67	\$ 33,391.97	\$ 40,469.75	\$27,570.19	\$12,633.55	\$32,692.99	\$ 55,969.50	\$169,260.22	\$16,157.29	\$ 50,479.02	\$ 24,060.95	\$ 9,899.32	\$29,152.89
					\$ 109.02	\$ 935.63	\$ 2,269.05	\$ 8.36	\$ 11.08	\$ 1.93		\$ 2.31	
\$ 966.90	\$ 537.06	\$ 2,424.39	\$ 461.02	\$ 361.13	\$58.31	\$1,531.23	\$ 4,586.22	\$ 4,223.78	\$ 1,215.52	\$ 3,199.17	\$ 543.93	\$ 131.74	\$ 1,517.20
161.92	8.79	346.89	213.78	250.00	11.70	223.39		2,527.97	20.85	585.54		46.80	
\$ 804.98	\$ 545.85	\$ 2,977.50	\$ 674.80	\$ 111.13	\$ 760.99	\$ 392.21	\$ 2,317.19	\$ 6,700.11	\$ 1,183.59	\$ 3,786.64	\$ 533.93	\$ 180.85	\$ 1,517.20
\$16,137.34	\$18,939.82	\$ 35,669.47	\$ 39,794.95	\$27,681.32	\$11,872.56	\$33,085.20	\$ 53,652.31	\$162,500.11	\$17,340.88	\$ 46,692.38	\$ 24,594.88	\$ 9,718.47	\$27,635.69
26.29	22.03	24.88	29.25	37.20	23.73	33.97	19.3	25.02	20.46	16.60	18.16	26.06	31.17

(Figures in italics were red. in original.)



Defendants' Exhibit 22.

METRO-GOLDWYN-MAYER  
CULVER CITY STUDIO

ANALYSES OF CHANGES IN CONTINUITY AND PRODUCTION BALANCES

	Continuities (Exclusive of Book)			Productions		
	1930	1931	1932	1930	1931	1932
Balance—Beginning of Year	\$ 881,793.27	\$ 861,531.58	\$1,097,997.89	\$3,845,708.64	\$6,603,217.60	\$4,057,298.54
Charges During Year	\$2,248,643.70	\$2,290,877.27	\$2,134,630.66	\$19,303,057.23	\$19,247,149.54	\$16,204,197.54
Used or Sold During Year	1,763,725.52	2,076,831.99	1,552,835.35	16,376,807.96	21,455,748.93	16,928,816.12
Excess Charges (Consumption)	\$ 484,918.18	\$ 214,045.28	\$ 581,795.31	\$ 2,926,249.27	\$ 2,208,599.39	\$ 724,618.58
Written Off (Less reinstated)						
During Year	505,179.87	22,421.03	51,368.16	168,740.31	337,319.67	151,686.80
Net Increase—Decrease in Balance	29,261.69	236,466.31	530,427.15	2,757,508.96	254,919.06	876,305.38
Balance—End of Year	\$ 861,531.58	\$1,097,997.89	\$1,628,425.04	\$6,603,217.60	\$4,057,298.54	\$3,180,993.16

STUDIO EXPENDITURES

	1930	1931	1932
Total	\$24,096,396.91	\$23,361,826.38	\$19,266,251.82
Decrease over Previous Year		734,570.53	4,095,574.56

(Words and figures in italics were red in original.)

Defendants' Exhibit 22.

METRO-GOLDWYN-MAYER  
CULVER CITY STUDIO

ANALYSES OF CHANGES IN CONTINUITY AND PRODUCTION BALANCES

	Continuities (Exclusive of Book)			Productions		
	1931	1932	1930	1931	1932	1930
Balance—Beginning of Year	\$ 861,531.58	\$1,097,997.89	\$3,845,708.64	\$6,603,217.60	\$4,057,298.54	\$3,180,993.16
Charges During Year	\$2,290,877.27	\$2,134,630.66	\$19,303,057.23	\$19,247,149.54	\$16,204,197.54	\$16,928,816.12
Used or Sold During Year	2,076,831.99	1,552,835.35	16,376,807.96	21,455,748.93	16,928,816.12	16,928,816.12
Excess Charges (Consumption)	\$ 214,045.28	\$ 581,795.31	\$ 2,926,249.27	\$ 2,208,599.39	\$ 724,618.58	\$ 724,618.58
Written Off (Less reinstated)						
During Year	22,421.03	51,368.16	168,740.31	337,319.67	151,686.80	151,686.80
Net Increase—Decrease in Balance	236,466.31	530,427.15	2,757,508.96	254,919.06	876,305.38	876,305.38
Balance—End of Year	\$1,097,997.89	\$1,628,425.04	\$6,603,217.60	\$4,057,298.54	\$3,180,993.16	\$3,180,993.16

STUDIO EXPENDITURES

	1930	1931	1932
Total	\$24,096,396.91	\$23,361,826.38	\$19,266,251.82
Decrease over Previous Year		734,570.53	4,095,574.56

(Words and figures in italics were red in original.)

SCHEDULE "I"

## Defendants' Exhibit 23.

2431

## M-G-M STUDIO

CONTINUITIES—USED AND REJECTED  
1930 to 1936 Inclusive

Year Ended	Charges	Used or Sold	Rejected Net After Reinstated	Transferred to New York Cosmo Settlement
August 1930	\$ 2,248,643.70	\$ 1,763,725.52	\$ 505,179.87	
1931	2,290,877.27	2,076,831.99	224,210.03	
1932	2,134,630.66	1,552,835.35	51,368.16	
1933	2,159,317.17	1,581,029.72	1,291.12	
1934	2,570,604.85	1,682,713.68	34,754.94 (A)	
1935	3,386,989.22	2,314,353.83	189.90	\$203,922.37
			17,080.81 (B)	
1936	4,391,628.68	2,478,921.16	3,076,439.21 (C)	
Total	\$19,182,691.55	\$13,450,411.25	\$3,663,882.98	\$203,922.37

Rejected (Net) Continuities represent 19.1% of Charges and  
27.1% of Used

Therefore, based on % of Charges—1932 loss was \$407,714.46  
do. % of used do. 420,818.38

(A) Sold—Sales Price less than cost of book—hence continuity considered rejected.

(B) Rejected—Charged to Overhead.

(C) Rejected—Charged to Reserve.

(Figures in italics were red in original.)

2433



## Defendants' Exhibit 24.

METRO-GOLDWYN-MAYER CORPORATION  
CULVER CITY STUDIO

COMPARATIVE STATEMENT OF DIRECT PRODUCTION COSTS  
For the Fiscal Years Ended 1930 to 1936, Inclusive

Other Than Stories and Continuities	Per Cent.	Total Stories and Continuities	Per Cent.	Original Stories, Continuities, Dialogue and Script Expense	Per Cent.	Book	Per Cent.
Amount	Amount	Amount	Amount	Amount	Amount	Amount	Amount
\$ 16,854,085.65	87.3	\$ 2,448,971.58	12.7	\$ 1,756,952.21	9.1	\$ 692,019.37	3.6
16,267,344.77	84.5	2,979,804.77	15.5	2,097,693.48	10.9	222,111.29	4.6
13,964,002.80	76.3	2,240,494.74	13.7	1,553,696.79	9.5	686,497.95	4.2
16,254,183.56	76.9	2,445,115.37	13.1	1,543,150.22	8.3	901,964.55	4.8
19,435,784.44	79.0	2,407,851.96	11.0	1,658,107.86	7.6	749,744.10	3.4
20,985,925.43	72.3	2,776,785.23	11.7	2,294,145.20	9.7	422,670.03	2.0
22,404,213.27	72.4	2,960,222.12	11.6	2,479,002.48	9.7	421,273.64	1.9
\$ 126,165,599.92	87.3	\$ 18,259,005.77	12.7	\$ 13,382,724.24	9.3	\$ 4,876,280.93	3.4

# **Defendants' Exhibit 25.**

2437

## APPORTIONMENT OF STUDIO OVERHEAD ON BASIS OF GROSS RECEIPTS FROM PICTURES PRODUCED AT STUDIO

	All Pictures	Pictures Produced at Studio	"Letty Lynton" % of Gross
United States 1932	\$30,020,526.08		
Gross Outside Producers	<u>5,238,631.30</u>		
		\$24,781,894.78	\$ 727,053.84 2.93
Foreign 1933	\$15,563,592.34		
Gross Outside Producers	<u>1,572,044.25</u>		
		13,991,548.09	417,862.51 2.99
Canada 1932	\$1,544,629.84		
Gross Outside Producers	<u>298,606.56</u>		
		1,246,023.28	27,369.72 2.20
<b>TOTAL</b>		<u>\$40,019,466.15</u>	<u>\$1,172,286.07</u> 2.93

2438

Total Studio Overhead—Per EXHIBIT 18-D5 \$5,891,374.57  
 Studio Overhead apportioned "Letty Lynton" on  
 Gross Receipts Basis—2.93% x \$5,891,374.57 172,617.27  
 36 Basis (2.77% x \$5,891,374.57) 163,649.29

2439

2131

2135

2136

**METRO-GOLDWYN-MAYER CORPORATION**  
**CULVER CITY STUDIO**

**COMPARATIVE STATEMENT OF DIRECT PRODUCTION COSTS**  
**For the Fiscal Years Ended 1930 to 1936, Inclusive**

Year Ended	Total Costs Charged to Production		Other Than Stories and Continues		Total Stories and Continues		Original Stories, Continues, Dialogue and Script Expense		Boo Amount
	Amount	Per Cent.	Amount	Per Cent.	Amount	Per Cent.	Amount	Per Cent.	
1930	\$ 19,303,057.23	100.0	\$ 16,854,085.65	87.3	\$ 2,448,971.58	12.7	\$ 1,756,952.21	9.1	\$ 602,019.
1931	19,247,149.54	100.0	16,267,344.77	84.5	2,979,804.77	15.5	2,097,693.48	10.9	722,111.
1932	16,204,197.54	100.0	13,964,002.80	86.3	2,240,194.74	13.7	1,558,696.79	9.5	686,497.
1933	18,699,298.93	100.0	16,254,183.56	86.9	2,445,115.37	13.1	1,543,150.82	8.3	901,964.
1934	21,843,636.40	100.0	19,435,784.44	89.0	2,407,851.96	11.0	1,658,107.86	7.6	749,744.
1935	23,762,770.66	100.0	20,985,985.43	88.3	2,776,785.23	11.7	2,294,115.20	9.7	482,670.
1936	25,364,495.39	100.0	22,404,213.27	88.4	2,960,282.12	11.6	2,479,008.48	9.7	481,273.
Total	\$144,424,605.69	100.0	\$126,165,599.92	87.3	\$18,259,005.77	12.7	\$13,382,724.84	9.3	\$4,876,980.



**Defendants' Exhibit 26.**

2440

May 3, 1932.

Mr. Sam Dembow, Jr.

**COMPOSITE REVIEW****LETTY LYNTON**

Metro Goldwyn Distr. Corp.  
 7515 ft. 9 reels 84 min.  
 Director—Clarence Brown

Cast—Joan Crawford  
 Robert Montgomery  
 Lewis Stone  
 Nils Asther

2441

Unanimously "A" and several "AA". One of the best Crawford's to date in which the star gives a superb dramatic performance. In addition, Robert Montgomery comes back in a role that suits him to a "T". The combination of Crawford and Montgomery is superb. Nils Asther performs with unusual zest and small bits by Lewis Stone and Mary Robson help to round out a sure-fire box office hit. Cannot fail to go over.

Louis Notarius

2442

**Defendants' Exhibit 27-A.**

**LOEW'S INCORPORATED**

244

**OFFICERS**

President	Nicholas M. Schenck
1st Vice President	Arthur M. Loew
Vice President	David Bernstein
"	David L. Loew
"	Edward A. Schiller
Secretary	Leopold Friedman
Treasurer	David Bernstein
Assistant Treasurer	Charles K. Stern
"	Charles C. Moskowitz
"	Len Cohen
Assistant Secretary	Jesse T. Mills
"	H. Helborn
"	Isidor Frey

244

**DIRECTORS**

David Bernstein  
 Harley L. Clarke  
 Leopold Friedman  
 Arthur M. Loew  
 David L. Loew  
 William A. Phillips  
 Daniel E. Pomeroy  
 Harry M. Rice  
 J. Robert Rubin  
 Nicholas M. Schenck  
 Charles M. Schwab  
 David Warfield

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**Defendants' Exhibit 27-B.****RETRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION.****OFFICERS**

President	Nicholas M. Schenck
Vice President	J. Robert Rubin
"	Arthur M. Loew
"	David Bernstein
"	Edward Bowes
"	Felix F. Feist
Treasurer	David Bernstein
Secretary	J. Robert Rubin
Assistant Secretary	Jesse T. Mills
"	Leopold Friedman
"	S. S. Braunberg
Assistant Treasurer	Charles K. Stern
"	David L. Loew
"	C. C. Moskowitz
"	R. Lazarus

**DIRECTORS.**

Nicholas M. Schenck  
 Louis B. Mayer  
 David Bernstein  
 J. Robert Rubin  
 Arthur M. Loew

**Defendants' Exhibit 27-C.****METRO-GOLDWYN PICTURES CORPORATION****OFFICERS**

President	Nicholas M. Schenck
Vice President	J. Robert Rubin
"	David Bernstein
"	Arthur M. Loew
"	Edward Bowes
Treasurer	David Bernstein
Secretary	J. Robert Rubin
Assistant Treasurer	Charles K. Stern
"	David L. Loew
"	C. C. Moskowitz
"	R. Ozarus
Assistant Secretary	Jesse T. Mills
"	Leopold Friedman
"	S. S. Braunberg
"	Hattie Helborn

**DIRECTORS**

Nicholas M. Schenck  
 David Bernstein  
 J. Robert Rubin  
 David Warfield  
 Arthur M. Loew  
 David L. Loew  
 Messmore Kendall  
 Leopold Friedman  
 Edward Schilier  
 Felix F. Feist  
 E. M. Saunders  
 William Braden  
 Jesse T. Mills  
 Edward Bowes  
 C. C. Moskowitz

**Defendants' Exhibit 27-D.****CULVER EXPORT CORPORATION****OFFICERS**

President	Arthur M. Loew
Vice President	M. A. Spring
Treasurer	Henry F. Krecke
Secretary	David Blum
Assistant Secretary	Lillian Reiss
Assistant Treasurer	Harry C. Kleindienst
"	Charles K. Stern
"	J. T. Mills

**DIRECTORS**

Arthur M. Loew  
M. A. Spring  
David Blum



## Defendants' Exhibits 28-A to 28-E.

Country	Company	Date Of Organization	Under Laws Of	Countries In Which Distributed	Officers	Directors
Argentina	Metro-Goldwyn-Mayer De La Argentina	2/26/27	New Jersey	Argentina & Paraguay	David O. Decker—Pres. Charles E. Quick—Vice Pres. Len Cohen—Treas. Lillian Reiss—Secy. Stuart B. Dunlap—Ass't Secy.	D. O. Decker C. E. Quick Len Cohen
Australia	Metro-Goldwyn-Mayer, Ltd.	6/12/25	New South Wales	Australia, New Zealand & Pacific Islands	N. B. Freeman—Managing Director T. E. Ferguson—Secy-Treas.	N. B. Freeman T. E. Ferguson D. Lake
Austria	Metro-Goldwyn-Mayer Filme G.M.B.H.	2/4/28	Austria	Austria	F. W. N. Becker	F. W. N. Becker
Belgium	Metro-Goldwyn-Mayer S.A.B.	5/11/26	Belgium	Belgium & Belgian Congo	S. Habib—Managing Director	L. L. Lawrence G. Tassart
Brazil	Metro-Goldwyn-Mayer do Brazil	7/21/26	New Jersey	Brazil	D. O. Decker—Pres. C. E. Quick—Vice Pres. Lillian Reiss—Secy. B. Fried—Ass't Secy. Stuart B. Dunlap—Ass't Secy.	D. O. Decker C. E. Quick Len Cohen
British West Indies	Metro-Goldwyn-Mayer Of The West Indies	5/10/32	New Jersey	British West Indies, Martinique & Guadeloupe & French and Dutch Guiana	David O. Decker—Pres. Charles E. Quick—Vice Pres. Lillian Reiss—Secy. Len Cohen—Treas. Wm. L. Engelhardt—Ass't Treas. Bertha Fried—Ass't Secy.	D. O. Decker C. E. Quick Len Cohen
Bulgaria	Metro-Goldwyn-Mayer A.G.	1/9/31	Bulgaria	Bulgaria	L. L. Lawrence Leo F. Berger J. M. Kerbel	L. L. Lawrence Leo F. Berger J. M. Kerbel
Chile	Compania Cinematografica Metro-Goldwyn-Mayer De Chile	9/30/27	New Jersey	Chile	D. O. Decker—Pres. Chas. E. Quick—Vice Pres. Len Cohen—Treas. Lillian Reiss—Secy. Bertha Fried—Ass't Secy. Stuart B. Dunlap—Ass't Secy.	D. O. Decker Chas. E. Quick Len Cohen
China	Metro-Goldwyn-Mayer Of China	7/22/30	New Jersey	China, Hong Kong & Macao	David O. Decker—Pres. Charles E. Quick—Vice Pres. Lillian Reiss—Secy. Len Cohen—Treas. Bertha Fried—Ass't Secy.	Len Cohen Charles K. Stern David O. Decker

## Defendants' Exhibits 28-A to 28-E (continued).

Country	Company	Date Of Organization	Under Laws Of	Countries In Which Distributed	Officers	Directors
Colombia	Metro-Goldwyn-Mayer de Colombia, Inc.	8/20/30	New Jersey	Colombia	David O. Decker—Pres. Charles E. Quick—Vice Pres. Lillian Reiss—Secy. Bertha Fried—Ass't Secy. Len Cohen—Treas.	D. O. Decker C. E. Quick Len Cohen
Cuba	Metro-Goldwyn-Mayer de Cuba	1/29/26	Cuba	Cuba	David O. Decker—Pres. Charles E. Quick—Vice Pres. Jose Manuel Rodriguez Garcia—Secy. Pedro V. Jorge—Ass't Secy. Charles E. Quick—Treas. Edward F. O'Connor—Ass't Treas.	David O. Decker J. M. Rodriguez Garcia Pedro V. Jorge Edward F. O'Connor
Czechoslovakia	Metro-Goldwyn-Mayer, Akt. Ges.	3/24/25	Czechoslovakia	Czechoslovakia	O. Metall Jindr Henrich Friedmann Leo Beran Charles Valenta	O. Metall Jindr Henrich Friedmann Leo Beran Charles Valenta
Denmark	Metro-Goldwyn-Mayer, A/S	11/25/29	Denmark	Denmark & Iceland	L. L. Lawrence P. Olufsen	L. L. Lawrence P. Olufsen
Dutch East Indies	Metro-Goldwyn-Mayer (Oriental) Co. Inc.	8/1/29	N. J.	Dutch East Indies	David O. Decker—Pres. C. E. Quick—Vice Pres. Lillian Reiss—Secy. Len Cohen—Treas.	David O. Decker C. E. Quick Len Cohen
Egypt	Metro-Goldwyn-Mayer Of Egypt, Inc.	2/7/31	New Jersey	Egypt, Sudan, Palestine, Syria, Iraq, Iran, Arabia, Ethiopia	D. O. Decker—Pres. C. E. Quick—Vice Pres. L. L. Lawrence—Secy. L. Reiss—Secy. B. Fried—Ass't Secy. L. Cohen—Treas. W. L. Engelhardt—Ass't Treas.	David O. Decker Charles E. Quick Len Cohen
Italy	Metro-Goldwyn-Mayer Films S.A.I.	4/18/25	Italy	Italy & Colonies	L. L. Lawrence—Managing Director A. Bedini Jacobini—Secy.	L. L. Lawrence A. Bedini Jacobini
Japan	Metro-Goldwyn-Mayer Ltd.	3/30/26	Delaware	Japanese Empire (incl. Korea & Formosa) and Manchukuo	D. O. Decker—Pres. C. E. Quick—Vice Pres. L. Reiss—Secy. B. Fried—Ass't Secy. Len Cohen—Treas.	D. O. Decker C. E. Quick Len Cohen
Yugo Slavia	Metro-Goldwyn-Mayer D.D.	9/1/28	Yugo Slavia	Yugo Slavia	Allan Byre—Managing Director Henry Lastique Louis L. M. Chatain Andre Elie	Allan Byre Henry Lastique Louis L. M. Chatain Andre Elie

## Defendants' Exhibits 28-A to 28-E (continued).

Country	Company	Date Of Organization	Under Laws Of	Countries In Which Distributed	Officers	Directors
Germany	Metro-Goldwyn-Mayer Film A.G.	8/27/31	Germany	Germany	S. Eckman, Jr.—Chairman & Managing Director G. R. Webb—Secy.	S. Eckman, Jr. Arthur M. Loew James C. Squire J. Robert Rubin H. Sydney Wright
Great Britain	Metro-Goldwyn-Mayer Pictures, Ltd.	8/20/24	England	British Isles	L. L. Lawrence—Pres. E. S. Hart—Vice Pres. G. Nicholas—Secy.	W. D. King O. Capadalis
Greece	Metro-Goldwyn-Mayer Films Hellas Ltd.	12/15/28	Greece	Greece, Albania & Island Of Cypress	D. O. Decker—Pres. Charles E. Quick—Vice Pres. Len Cohen—Treas. Lillian Reiss—Secy. Bertha Fried—Ass't Secy. Wm. L. Engelhardt—Ass't Treas.	D. O. Decker Charles E. Quick Len Cohen
Guatemala	Metro-Goldwyn-Mayer De La America Central	2/23/35	Guatemala	Guatemala, Salvador, Honduras, Nicaragua, Costa Rica & British Honduras	D. O. Decker—Pres. Charles E. Quick—Vice Pres. Len Cohen—Treas. Lillian Reiss—Secy. Bertha Fried—Ass't Secy. Wm. L. Engelhardt—Ass't Treas.	D. O. Decker Charles E. Quick Len Cohen
Holland	N.V. Metro-Goldwyn-Mayer Film Maatschappij	7/9/30	Holland	Holland	F. L. D. Strenght—Managing Director	F. W. N. Becker L. L. Lawrence
Hungary	Metro-Goldwyn-Mayer Distributing, Corp.	2/3/28	Hungary	Hungary	L. L. Lawrence Dr. A. Lehel	L. L. Lawrence Dr. A. Lehel
India	Metro-Goldwyn-Mayer India Ltd.	10/25/28	New Jersey	India, Burma, Ceylon & Afghanistan	D. O. Decker—Pres. C. E. Quick—Vice Pres. Lillian Reiss—Secy. Bertha Fried—Ass't Secy. Len Cohen—Treas. R. Lazarus—Ass't Secy. W. L. Engelhardt—Ass't Treas.	D. O. Decker C. E. Quick Len Cohen
Poland	Tow. Filmowe Metro-Goldwyn-Mayer Sp. Z. Ogr. Odp.	6/3/29	Poland	Poland	Aiv. E. Giobbe della Bitta L. L. Lawrence A. Bedini Jacobini	Aiv. E. Giobbe della Bitta L. L. Lawrence A. Bedini Jacobini
Puerto Rico	Metro-Goldwyn-Mayer Co. de Puerto Rico	7/8/26	Delaware	Puerto Rico, Vieques, Virgin Islands, Dominican Republic, Netherland West Indies	D. O. Decker—Pres. C. E. Quick—Vice Pres. Len Cohen—Treas. L. Reiss—Secy. B. Fried—Ass't Secy.	D. O. Decker C. E. Quick Len Cohen
Portugal	Metro-Goldwyn-Mayer Filmes Limitada	6/21/27	Portugal	Portugal, Azores, Madeira, Angola & Beira	L. L. Lawrence Leo F. Berger Miroslav Berger	L. L. Lawrence Leo F. Berger Miroslav Berger

## Defendants' Exhibits 28-A to 28-E (continued).

Country	Company	Date Of Organization	Under Laws Of	Countries In Which Distributed	Officers	Directors
Latvia	Filmindustrie Aktiengesellschaft Metro-Goldwyn-Mayer	12/22/30	Latvia	Latvia	L. Model—Managing Director	L. L. Lawrence L. Model M. Stillbach
Lithuania	F. W. N. Becker Metro-Goldwyn-Mayer Films	8/1/31	Lithuania	Lithuania	L. L. Lawrence F. W. N. Becker	L. L. Lawrence F. W. N. Becker
Norway	Metro-Goldwyn-Mayer A/S	5/28/29	Norway	Norway	D. O. Decker—Pres. C. E. Quick—Vice Pres. Lillian Reiss—Secy. B. Fried—Ass't Secy. Len Cohen—Treas. W. L. Engelhardt—Ass't Treas.	D. O. Decker C. E. Quick Len Cohen
Panama	Metro-Goldwyn-Mayer de Panama S.A.	11/11/30	Panama	Panama, Canal Zone, Isl. of Jamaica	D. O. Decker—Pres. Charles E. Quick—Vice Pres. Len Cohen—Treas. Lillian Reiss—Secy. Bertha Fried—Ass't Secy. Wm. L. Engelhardt—Ass't Treas.	D. O. Decker Charles E. Quick Len Cohen
Peru	Metro-Goldwyn-Mayer del Peru	2/26/31	New Jersey	Peru, Ecuador & Bolivia	D. O. Decker—Pres. C. E. Quick—Vice Pres. Lillian Reiss—Secy. B. Fried—Ass't Secy. L. Cohen—Treas. W. L. Engelhardt—Ass't Treas. S. B. Dunlap—Ass't Secy.	D. O. Decker C. E. Quick Len Cohen
Philippine Isl.	Metro-Goldwyn-Mayer Manila, Inc.	1/20/27	Philippine Islands	Philippine Islands	D. O. Decker—Pres. C. E. Quick—Vice Pres. L. Cohen—Secy. L. Reiss—Ass't Secy. Len Cohen—Treas. H. C. Kleindienst—Ass't Treas. Paul Cohen—Ass't Secy.	D. O. Decker C. E. Quick Len Cohen
Poland	Tow. Filmowe Metro-Goldwyn-Mayer Sp. Z. Ogr. Odp.	6/3/29	Poland	Poland	Aiv. E. Giobbe della Bitta L. L. Lawrence A. Bedini Jacobini	Aiv. E. Giobbe della Bitta L. L. Lawrence A. Bedini Jacobini
Puerto Rico	Metro-Goldwyn-Mayer Co. de Puerto Rico	7/8/26	Delaware	Puerto Rico, Vieques, Virgin Islands, Dominican Republic, Netherland West Indies	D. O. Decker—Pres. C. E. Quick—Vice Pres. Len Cohen—Treas. L. Reiss—Secy. B. Fried—Ass't Secy.	D. O. Decker C. E. Quick Len Cohen
Portugal	Metro-Goldwyn-Mayer Filmes Limitada	6/21/27	Portugal	Portugal, Azores, Madeira, Angola & Beira	L. L. Lawrence Leo F. Berger Miroslav Berger	L. L. Lawrence Leo F. Berger Miroslav Berger

## Defendants' Exhibits 28-A to 28-E (continued).

Country	Company	Date Of Organization	Under Laws Of	Countries In Which Distributed	Officers	Directors
Roumania	Metro-Goldwyn-Mayer Film S.A.R.	9/21/26	Roumania	Roumania	G. N. Ghica—Pres.	L. L. Lawrence J. S. Ferguson R. Monta M. Wallfisch Em. Zaharovici G. N. Ghica
South Africa	Metro-Goldwyn-Mayer Films S.A. (Pty) Ltd.	12/31/30	Union Of South Africa	Africa, South Of The Equator, Kenya & Uganda	M. J. Davis—Manager Ernest Hughes—Secy.	D. O. Decker Len Cohen C. E. Quick
Spain	Metro-Goldwyn-Mayer, Iberica, S.A.	7/12/28	Spain	Spain & Colonies	A. Seres—Pres. L. G. Clot Junoy—Secy. J. Edelstein—Treas. L. Echevarria—Ass't Treas.	A. Seres L. G. Clot Junoy J. Edelstein L. Echevarria
Swedish Settlements	Metro-Goldwyn-Mayer Oriental Co. Inc.	8/1/29	New Jersey	Straits Settlements, Federated & Unfederated Malay States, Siam, Sarawak & British North Borneo	D. O. Decker—Pres. C. E. Quick—Vice Pres. Len Cohen—Treas.	D. O. Decker C. E. Quick Len Cohen
Sweden	Elmo A/B Le Mat Metro-Goldwyn	9/2/25	Sweden	Sweden	L. S. Lannby L. L. Lawrence Y. Schartan	L. S. Lannby L. L. Lawrence Y. Schartan
Switzerland	M-G-M S.A. (A.G.)	12/27/27	Switzerland	Switzerland	L. L. Lawrence H. A. Bannmann Dr. Otto Frickor	L. L. Lawrence H. A. Bannmann Dr. Otto Frickor
Uruguay	Metro-Goldwyn-Mayer Del Uruguay	8/7/34	New Jersey	Uruguay	D. O. Decker—Pres. C. E. Quick—Vice Pres. Len Cohen—Treas. Lillian Reiss—Secy. Bertha Fried—Ass't Secy. Stuart B. Dunlap—Ass't Secy. Wm. Engelhardt—Ass't Secy.	D. O. Decker C. E. Quick Len Cohen
Venezuela	Metro-Goldwyn-Mayer De Venezuela	4/8/31	New Jersey	Venezuela	D. O. Decker—Pres. C. E. Quick—Vice Pres. Len Cohen—Treas. Lillian Reiss—Secy. Bertha Fried—Ass't Secy. Len Cohen—Treas. W. L. Engelhardt—Ass't Treas.	D. O. Decker C. E. Quick Len Cohen



**Defendants' Exhibits 29-A to 29-B.**

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These exhibits consist of a list of sales of motion picture rights in plays (1932)\* made up by Sidney R. Fleischer, printed herein at pages 675 to 676.

**Defendants' Exhibit 30 for Identification.**

Portions of letter of July 14, 1937, from Ligon Johnson, Esq. to Samuel D. Cohen, containing statement as to runs of plays embraced in Fleischer's list (Exhibit 29-A to 29-B), printed herein at pages 680 to 685.

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**Defendants' Exhibit 31.****EXTRACTS FROM****CERTIFICATE OF INCORPORATION****OF****MOTION PICTURE PRODUCERS AND DISTRIBUTORS OF AMERICA, INC.**

We, the undersigned, all being of full age and citizens of the United States, and a majority of us being residents of the State of New York, desiring to form a corporation pursuant to Article 12 of the Membership Corporations Law of the State of New York, do hereby certify as follows:

**FIRST:** The name of the proposed corporation is:

**MOTION PICTURE PRODUCERS AND DISTRIBUTORS OF AMERICA, INC.**

**SECOND:** The object for which the corporation is to be created is to foster the common interests of those engaged in the motion picture industry in the United States, by establishing and maintaining the highest possible moral and artistic standards in motion picture production, by developing the educational as well as the entertainment value and the general usefulness of the motion picture, by diffusing accurate and reliable information with reference to the industry, by reforming abuses relative to the industry, by securing freedom from unjust or unlawful exactions; and by other lawful and proper means.

**EXTRACTS FROM****BY-LAWS****OF****MOTION PICTURE PRODUCERS AND DISTRIBUTORS OF AMERICA, INC.****ARTICLE II****MEMBERSHIP**

**SECTION 1.** The membership of the Association shall be divided into five classes, to-wit:

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*Defendants' Exhibit 31 (continued).*

2476

Class A—Consisting of producers of motion pictures.

Class B—Consisting of distributors of motion pictures.

SECTION 2. Any person, firm or corporation regularly engaged in the business of producing motion pictures in the United States shall be eligible to become a member of Class A. \* \* \*

SECTION 3. Any person, firm or corporation regularly engaged in the business of distributing motion pictures in eight or more different states of the United States shall be eligible to become a member of Class B. \* \* \*

2477

## ARTICLE III

## FEES, DUES AND ASSESSMENTS

2478

SECTION 1. The incorporators, by the vote of a majority thereof, at the first annual meeting of the Association, or at any adjournment thereof, shall fix the amount of the membership fee and the membership dues to be paid by the members of Class A, or the basis upon which and method by which the same are to be computed and determined, and the time or times when the same are to be payable, and no increase, decrease or other change with reference thereto shall be made, except by the vote of four-fifths of all the members of Class C and two-thirds of all the members of Class D at a special meeting of the Association called for the purpose.

SECTION 2. The incorporators, by the vote of a majority thereof, at the first annual meeting of the Association, or at any adjournment thereof, shall fix the amount of the membership fee and membership dues to be paid by the members of Class B, or the basis upon which and method by which the same are to be computed and determined, and

*Defendants' Exhibit 31 (continued).*

the time or times when the same are to be payable, and no increase, decrease or other change with reference thereto shall be made, except by the vote of four-fifths of all the members of Class D and two-thirds of all the members of Class C at a special meeting of the Association called for the purpose.

2479

SECTION 5. All membership fees paid by members of Class A or Class B shall be held by the Association intact and as a special fund (hereinafter called the membership fund) which shall not be, or be held to be, an asset of the Association, and shall not be used or disbursed for any purpose, except as provided in these by-laws. The membership fund shall be invested and reinvested from time to time in such securities as may be lawfully purchased and held by trustees and/or savings institutions under the laws of the State of New York, and in no others. The income from such securities shall be paid, as and when accrued and collected, into the general funds of the Association and may be used for the current expenses or other purposes of the Association.

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SECTION 6. All membership dues paid by members of Class A or Class B shall be paid into the general funds of the Association and may be used for the current expenses or other purposes of the Association.

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## Defendants' Exhibit 32.

### MOTION PICTURE PRODUCERS AND DISTRIBUTORS OF AMERICA, INC.

#### APPLICATION FOR CLASS A MEMBERSHIP

The undersigned, being a corporation regularly engaged in the business of producing motion pictures in the United States, hereby applies for Class A Membership in the Motion Picture Producers and Distributors of America, Inc. (hereinafter called the Association) subject to, and in accordance with, the by-laws of the Association, and hereby appoints

as the individual to be elected a member of Class C of the Association.

In consideration of the election of the undersigned as a member of Class A and of the individual above appointed as a member of Class C of the Association, the undersigned

Hereby agrees to pay to the Association the membership fee and membership dues which shall become payable by the undersigned as a member of Class A, in accordance with the by-laws of the Association, the resolution with reference to fees and dues adopted by the incorporators of the Association (of which a copy is hereto attached) and any increase, decrease or other change with reference to fees and/or dues which shall become effective and binding upon the undersigned as a member of Class A in accordance with the by-laws of the Association; and

Hereby accepts and agrees to be bound by all the provisions of the by-laws of the Association.

*Defendants' Exhibit 32 (continued).*

The amount of the gross revenue to be used as the basis for computing the membership fee payable by the undersigned and the membership dues payable by the undersigned as a member of Class A during the present calendar year is \_\_\_\_\_

2485

IN WITNESS WHEREOF, the undersigned has caused this application to be executed by its officers thereunto duly authorized the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

By \_\_\_\_\_

President.

2486

Attest:

.....  
Secretary.

**RESOLUTION WITH REFERENCE TO FEES AND DUES ADOPTED  
BY THE INCORPORATORS OF THE ASSOCIATION.**

**RESOLVED**, pursuant to Sections 1 and 2 of Article III of the by-laws:

1. Each member of Class A shall pay to the Association, upon election to membership (or prior thereto if required by the Association) as a membership fee, the sum of \$1,000.

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2. Each member of Class A shall pay to the Association each week as membership dues (a) a sum equal to 1/100th of 1% of the gross revenue received by such member during the preceding calendar year from the sale, rental or other disposition for exhibition within the United States, of motion pictures produced by such member and not handled by a distributor, and also (b) a sum equal to 1/100th of

*Defendants' Exhibit 32 (continued).*

88 1% of the gross revenue received by any distributor during the preceding calendar year from the sale, rental or other disposition for exhibition within the United States, of motion pictures produced by such member and handled by such distributor, excepting any gross revenue so received by any distributor who is a member of Class B when the dues are payable. If any such member shall sell or otherwise dispose of any such motion picture to any distributor without retaining any interest in the revenue thereafter received from the exhibition of such picture within the United States, such picture shall not be deemed to be handled by a distributor within the meaning of this paragraph.

89 3. Each member of Class B shall pay to the Association upon election to membership (or prior thereto if required by the Association) as a membership fee, a sum equal to 1/10th of 1% of the gross revenue received by such member during the preceding calendar year from the sale, rental or other disposition of motion pictures for exhibition within the United States.

90 4. Each member of Class B shall pay to the Association each week as membership dues, a sum equal to 1/100th of 1% of the gross revenue received by such member during the preceding calendar year from the sale, rental or other disposition of motion pictures for exhibition within the United States.

5. Each member of Class A and each member of Class B shall furnish to the Board of Directors in advance the amount of the gross revenue to be used as the basis for computing the membership fee and/or dues of such member, and the Board shall have power, in behalf of the Association, to accept the amount so furnished by any member. If any member shall fail to furnish such amount in advance, or if the Board does not accept the amount so furnished by any member, the Board shall, from any in-



*Defendants' Exhibit 32 (continued).*

formation available to it, fix tentatively the amount of the gross revenue to be used as the basis for computing the amount of the membership fee and/or dues of such member. The member may then assume the burden of establishing the amount of such gross revenue to the satisfaction of the Board, and/or may require that the amount of such gross revenue be determined by three arbitrators, one to be the President of the Association or appointed by the President, another to be appointed by the member, and the third to be appointed by the two arbitrators so chosen. The arbitrators may be, but need not be, directors or members of the Association. The decision of any two of such arbitrators given in writing shall be final and binding upon the Association and the member. The certificate of a certified public accountant of good standing in the City of New York shall be accepted by the Association and the arbitrators as conclusive evidence of the amount of such gross revenue, but no member shall be under any obligation to furnish such a certificate.

2491

2492

6. Until the amount of such gross revenue shall finally be determined by agreement between the member and the Association, or by arbitrators appointed as herein provided, or by the certificate of a certified public accountant of good standing in the City of New York, the amount of the gross revenue fixed tentatively by the Board shall be used as the basis for computing the amount of the membership fee and/or dues of the member, and the member shall make payments to the Association on that basis. If the amount of such gross revenue shall finally be determined by such agreement, such arbitrators or such certificate, the Association and the member shall make such adjustment as may be necessary with respect to payments previously made for or on account of membership fee and/or dues, the Association refunding any excess and the member paying any shortage which may exist with respect to such payments previously made.

2493

**Defendants' Exhibit 33.**

AGREEMENT made this 7th day of April, 1924, between METRO PICTURES CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the State of New York, hereinafter called the party of the first part, and Louis B. Mayer Pictures Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, hereinafter called the party of the second part.

**WITNESSETH :**

WHEREAS, the party of the first part is engaged in the manufacture and distribution of motion picture photo-plays throughout the world; and

WHEREAS, the party of the second part is now engaged in the production of motion picture photo-plays, some of which are being distributed throughout the world by Metro Pictures Corporation under existing contracts; and

WHEREAS, Louis B. Mayer, Irving Thalberg and J. Robert Rubin constitute the Board of Directors and officers of the party of the second part, and have contracted for their services with the said party of the second part for a term extending beyond the period of this agreement and any renewal thereof; and

WHEREAS, the party of the first part is desirous of engaging the party of the second part, including the services of its officers, as stated above, to supervise, manage and generally control the manufacture of all pictures to be produced by Metro Pictures Corporation, for a period of three(3) years from the date hereof except as hereinafter limited, upon the terms and conditions hereinafter more fully stated; and

*Defendants' Exhibit 33 (continued).*

WHEREAS, the party of the second part is willing to supervise and manage the manufacture of all pictures for the party of the first part exclusively, as herein stated (except as herein limited) and for that purpose to furnish the services of its personnel, to wit:—Louis B. Mayer, Irving Thalberg and J. Robert Rubin:

2497

Now, therefor, in consideration of the premises and the sum of One Dollar, and other good and valuable considerations, by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged,

## IT IS AGREED AS FOLLOWS:—

2498

The party of the first part hereby engages the party of the second part, with its personnel, consisting of Louis B. Mayer as General Manager of studio and production, and Irving Thalberg as supervisor of production, and J. Robert Rubin, as New York representative of producing activities of the party of the second part of all motion pictures to be produced by the party of the first part, its subsidiaries, or the Metro-Goldwyn Corporation, or any other corporation into which the Metro Pictures Corporation may merge, or by which its capital stock shall be owned, during a period of three years from the date hereof, including in such engagement the full and complete management and operation of each and every studio maintained by the party of the first part, its subsidiaries, or the said Metro-Goldwyn Corporation or any other corporation into which the party of the first part may merge, or by which its capital stock shall be owned, SUBJECT to the right of the party of the first part to have manufactured at its studio or studios, the pictures of Coogan and Ingram, as hereinafter provided.

2499

The party of the second part agrees to act as such supervisor and Manager of all motion pictures to be produced by Metro Pictures Corporation (except those expressly excepted by these presents), during the period stated in

*Defendants' Exhibit 33 (continued).*

500 the preceding paragraph, and to that end and purpose agrees to give, to the party of the first part, its best efforts and devote its time and services exclusively and furnish at all times the exclusive picture manufacturing services of Louis B. Mayer and Irving Thalberg, and at least the same amount of time and attention of J. Robert Rubin as he is now being given by the latter to the business of the Louis B. Mayer Productions, Inc., and Louis B. Mayer Pictures, Inc.

For the purpose of this agreement, the corporate entity of Louis B. Mayer Pictures Inc. shall continue in existence.

501 The party of the second part agrees for itself and its personnel, that neither it or they will during the term of agreement, directly or indirectly, produce or attempt to produce or engage in the production of any photo-plays whatsoever, for any other than the party of the first part, and will not use or allow to be used the services of any director, star, actor, actors, author or employee, whose services the party of the second part controls, or permit to be used any property for the production of such photo-plays, other than for the sole and exclusive use and benefit and in the production of the photo-plays of the party of the first part hereto.

502 The party of the second part hereby represents that it has contracts with various artists, directors and others, a list of which is hereto attached, marked "EXHIBIT A." It also has a certain equipment, fixtures and furniture, a list of which is hereto attached, marked "EXHIBIT B." It likewise has certain stories, a list of which is hereby attached, marked "EXHIBIT C," and has prepared and begun production on certain motion picture photo-plays set forth in "EXHIBIT D" hereto attached.

The party of the second part hereby agrees to sell, assign and transfer unto the party of the first part all its right, title and interest in and to each and every of said con-

*Defendants' Exhibit 33 (continued).*

tracts set forth in Exhibit A, and in the event that any said contract shall by its terms be unable to be assigned, the party of the second part shall nevertheless perform such agreement for the benefit and at the expense of the party of the first part, and the party of the first part hereby agrees to take over and carry out all the terms and receive all the benefits of said contracts.

2503

The party of the first part further agrees to take over and to pay for, at cost, all the furniture and fixtures set forth in Exhibit B and to take over and pay for, at cost all the stories set forth in Exhibit C, and to take it over, pay for and complete the productions set forth in Exhibit D, and to pay therefor all the moneys expended thereon, with interest at seven percent. from the time said money was expended.

2504

The party of the second part does further assign, transfer and set over to the party of the first part, all of its rights, title and interest in and to the remaining two pictures to be produced under and pursuant to a certain agreement between Louis B. Mayer Productions, Inc. and John M. Stahl, and likewise assigns, sets forth and transfers unto the party of the first part all of its rights and benefits in and to a certain distribution contract between the party of the second part and the Associated National Pictures, Inc., for the distribution of the said two motion picture photoplays to be produced by John M. Stahl, and the party of the first part hereby agrees to accept said assignment of said contract and to carry out the terms and conditions of them both.

2505

The party of the second part represents that under its agreement of distribution of Stahl Pictures with Associated First National Pictures, Inc. it receives fifty (50%) percent of the gross receipts from distribution after the distributor has recouped the advance to the Producer, on delivery of negative. As to such gross receipts to be received from



*Defendants' Exhibit 33 (continued).*

2506 Associated First National on account of the remaining two pictures, the party of the first part shall first be entitled to receive and retain the cost of production advanced by it, including any production royalty or additional compensation. Thereafter, sixty (60%) percent (for its sole use and benefit) of the net amount of the receipts (over and above the cost of production and additional compensation required to be made out of the receipts under production contracts), and the party of the second part shall receive the remaining forty (40%) percent.

2507 All pictures produced by the party of the second part for and on behalf of the party of the first part, as herein provided, shall be distributed by the party of the first part, or its subsidiary, in the best possible manner, to the end that said pictures shall bring the highest possible returns consistent with good business policy, in the same manner that the party of the first part is now distributing the motion pictures heretofor produced by the Louis B. Mayer Productions, Inc., and released through the party of the first part, but shall there be no interference or right to approval of contract, of any kind by the party of the second part in the distribution of said pictures.

2508 The party of the first part agrees that it will accord to each photo-play produced during the term of this agreement, under the supervision and management of the party of the second part, general and special advertising in trade papers and otherwise, which in standard, quality and prominence shall be at least equal to the advertising and publicity now accorded to the party of the second part on photo-plays heretofor produced by the Louis B. Mayer Productions, Inc., and distributed by the party of the first part. Nothing herein contained, however, shall limit the right of the party of the first part to freely advertise said productions as Metro Pictures. Each motion picture pro-



*Defendants' Exhibit 33 (continued).*

duced, as herein provided shall contain on the main title the following:—

2509

LOUIS B. MAYER

Presents

.....  
(name of star or name of picture, or such other statement as may be necessary under the contract with the star or director, or author), and shall carry in said main title the words, "Produced by Louis B. Mayer," or, at the option of the party of the second part, "Produced by the Metro-Goldwyn-Mayer Corporation," and in all advertising and paid publicity the name of Louis B. Mayer shall be prominently mentioned as the producer of said motion picture photo-plays.

2510

The party of the first part shall organize or shall provide a corporation, domiciled in the State of California, which shall be the corporation that shall control the studio, which shall be known as Metro-Goldwyn-Mayer Studio and produce all the motion pictures to be produced hereunder. The name of this corporation, whose stock shall be owned or controlled wholly by the party of the first part, shall be the Metro-Goldwyn-Mayer Corporation, of which said Louis B. Mayer shall be the First Vice-President and General Manager and Irving Thalberg shall be the Second Vice-President and Supervisor of Productions, and J. Robert Rubin shall be Secretary, and the said Louis B. Mayer, Irving Thalberg and J. Robert Rubin shall likewise be directors of said corporation together with a majority designated by the party of the first part. All contracts with stars and directors and for stories and plays, shall be made by the said Louis B. Mayer, Irving Thalberg and J. Robert Rubin, in the name of said producing corporation. No contract, however, shall be entered into by said persons, on behalf of the corporation, until the same has

2511

*Defendants' Exhibit 33 (continued).*

2512 first been submitted to the party of the first part, and approved by any two of the following persons on behalf of the party of the first part, to wit:—Marcus Loew (or his successor in office as President of Loew's Incorporated) Nicholas M. Schenck (or his successor in office as Vice President of Loew's Incorporated) and J. Robert Rubin.

The party of the first part shall also have the right to propose to the party of the second part for production stories, plays, directors and actors, and when approved by the party of the second part, same shall be accepted.

2513 All actors and employees and other persons working at the studio or studios in connection with production of pictures, shall be engaged and be subject to the general control of Louis B. Mayer, except that the party of the first part shall maintain its own financial, auditing and accounting staff whose salary shall be charged as part of the studio operating expense. Such staff shall be under control of the party of the first part.

The party of the first part hereby agrees to provide necessary studios, equipment, paraphernalia, now in the studio, for which a rental shall be charged to production and finances to carry out the terms and conditions of this agreement.

2514 The party of the first part further agrees to cause the said Louis B. Mayer to be made a Vice-President of the Metro-Goldwyn Corporation.

The party of the first part further agrees that it will not engage in the manufacture or to be interested, either directly, or indirectly, in the manufacture of any motion picture photo-play, except that of Jackie Coogan and that of Rex Ingram, under circumstances hereinafter provided.

It is understood and agreed between the parties hereto that the title and ownership of all motion picture photo-plays and the negatives and positives thereof, shall at all times be and remain the property of the party of the first part, free from any lien of the party of the second part.

*Defendants' Exhibit 33 (continued).*

but the party of the second part shall be entitled to its compensation, as hereinafter set forth. 2515

All pictures heretofor produced and delivered by the Louis B. Mayer Productions Inc. for distribution by the party of the first part shall be continued to be distributed under the contracts heretofore existing, and all pictures now in the process of manufacturing, except those set forth in Exhibit D, shall be distributed upon the same terms and conditions as is provided in the said distribution contract and shall not be affected by these presents.

It is understood and agreed between the parties hereto that the party of the second part shall have no interest in the Jackie Coogan Productions, and shall receive the compensation herein provided on future Rex Ingram Productions only in the event that the party of the first part determines that the said pictures be made in the studio managed by the party of the second part, and/or shall be under the supervision and control of the party of the second part. 2516

It is further expressly understood that nothing herein contained shall prevent Metro Pictures Corporation from distributing any photo-plays manufactured by outside producers and as to these, the party of the second part, shall not be called upon to supervise or manage said productions, nor shall the party of the second part be entitled to any compensation arising from distribution thereof or otherwise by Metro Pictures Corporation. 2517

The party of the second part shall make no charge of any kind to the party of the first part, except for the services of Louis B. Mayer of \$1500.00 per week, the sum of \$650.00 per week for the services of Irving Thalberg, and \$600.00 per week for J. Robert Rubin, and the actual cost of maintaining an office for the party of the second part in New York, of a size and with staff to be approved by the party of the first part. Upon the death of either of the above his salary ceases.

*Defendants' Exhibit 33 (continued).*

2518

The rental on the studio or studios to be used for the production of the pictures herein provided for, shall be fixed by mutual agreement of J. Robert Rubin and Nicholas M. Schenck, acting for the respective parties.

2519

In arriving at the cost of production, there shall be charged to each production or photo-play all moneys actually paid or expense incurred in its production, including an equitable proportion of the studio rental, plus depreciation (if studio rental is not a fixed sum per annum) and overhead, which overhead shall include a proportionate part of the salary herein allowed for the services of Louis B. Mayer, Irving Thalberg and J. Robert Rubin, and the expense of maintaining the New York office for the party of the second part. There shall be no charge for interest on moneys advanced for production.

2520

The party of the first part shall keep true, accurate and complete books of account in the customary form and manner, showing all expense entering into the cost of production and the maintenance of studio or studios, which books shall at all times be open to the party of the second part, and it shall keep further complete records of all receipts and intakes of all kinds and character from the distribution or other disposition of each of said photo-plays produced as herein above set forth. The party of the first part, or such subsidiary as it shall have to distribute said pictures, or the Metro-Goldwyn Corporation, or such other corporation as shall be the actual distributor of the said pictures, shall furnish to the party of the second part on the 20th day of each month, true and accurate statements of said moneys, receipts or intakes of each of said photoplays received by it for the week ending the last Saturday of the previous month. The party of the first part shall accompany such statements with a check for any amount shown to be due to the party of the second part, and the party of the second part shall have the right of access at all reasonable and proper times to examine

*Defendants' Exhibit 33 (continued).*

the books of the party of the first part, insofar as they relate to and involve the production and distribution of photo-plays produced under this agreement.

2521

And as for its compensation hereunder the party of the second part shall be entitled to receive, and the party of the first part hereby agrees to cause to be paid, a sum equal to twenty (20%) percent of the net receipts of the Metro Pictures Corporation, or the actual distributors of said pictures, from the distribution or other disposition of each of said pictures produced, as herein provided. Said compensation shall be arrived at as follows:

The pictures shall be placed in groups of four in order of release.

2522

Out of the gross receipts derived by Metro Pictures Corporation, or the actual distributor of said pictures, from the distribution or other disposition of said pictures, there shall be deducted, and retained for its own use at all times, a sum equal to thirty (30%) percent of such gross receipts to cover expenses of distribution and overhead. The remainder 70% of said gross receipts (hereinafter called net receipts) shall be applied by Metro Pictures Corporation to reimburse itself for the cost of production, as hereinbefore defined, including therein any royalty or additional compensation required to be made out of the receipts under production contracts and positive prints. After the party of the first part has reimbursed itself out of the said 70% of the gross receipts for all cost of production, including royalty or other payments required to be made out of the gross receipts and prints, the party of the first part shall pay out of the net receipts, to wit:— 70% of the gross receipts, (after the party of the first part has reimbursed itself for cost of production) a sum equal to 20% of the net receipts and

2523



*Defendants' Exhibit 33 (continued).*

2524

retain for itself the remaining 80% of such net receipts.

2525

For the purpose of determining the compensation to be paid to the party of the second part under the provisions of this article, it is expressly understood and agreed that the party of the first part shall first reimburse itself for the cost of production of each group of four pictures, as hereinbefore defined. If at the end of eighty (80) weeks from the date of release of the fourth picture of said group of four, the party of the first part has not been fully reimbursed for all costs and advances made by it on account of such group of productions, then any deficiency shall be repaid proportionately by the party of the second part, but only to the extent of any moneys already paid to it on account of its compensation hereunder, and any further deficiency shall be chargeable and paid out of the net profits of any succeeding group or groups of productions, until the party of the first part shall have been repaid, all cost of production and advances of the preceding group or groups.

2526

The term "GROSS RECEIPTS" shall mean all sums of money actually collected by the party of the first part and/or its exchanges from exhibitors for rental and/or booking of prints in the United States. As to foreign territory, where the distributor does not maintain its own exchanges, gross receipts shall mean all sums of money actually collected by the party of the first part, from such foreign territory.

In the event of the death of Louis B. Mayer, or the simultaneous incapacity of both Louis B. Mayer and Irving Thalberg, extending over a period of six (6) months, then this agreement, may at the option of the party of the first part, be terminated and cancelled as to any pro-



*Defendants' Exhibit 33 (continued).*

duction not then begun, and the salary allowance to said Louis B. Mayer, Irving Thalberg and J. Robert Rubin shall cease, upon ten (10) days written notice of the election to terminate this agreement. Except that during such simultaneous incapacity of Louis B. Mayer and Irving Thalberg, continuing for a period of thirty days, the party of the first part shall have the right to cause their duties to be performed by someone else. Should the party of the first part exercise said option of termination, then these presents shall come to an end and be terminated as to any pictures not made, or not in process of manufacture at the date of said notice. 2527

If in the judgment and discretion of the party of the first part, it shall be necessary or advisable because of general conditions in the motion picture industry to discontinue for a time the production of pictures, not to exceed three (3) months in any one year, then and in that event, the party of the first part shall have the right to require the party of the second part to discontinue for such time, the production of said motion pictures, but such discontinuance shall nevertheless in no way interfere with the compensation to be paid to the individuals whose salary is expressly provided for by these presents. 2528

This agreement is personal and shall not be assigned or disposed of in any way by either party hereto.

This agreement shall in no wise be construed as, or is it intended to create a partnership or joint venture between the parties hereto, and neither party shall be liable for or bound by any representation whatsoever of the other. 2529

The agreement shall be effective as of April 7th, 1924, and shall include each and every picture made, begun or completed, except any picture in course of production and more than half finished during the period of three (3) years from the date hereof, by or on behalf of the party of the first part, its successors, subsidiaries or any corpo-

*Defendants' Exhibit 33 (continued).*

2530 ration with which it may be merged, or by any corporation which shall own all the capital stock of the party of the first part, except as hereinbefore excluded. No picture shall be commenced less than thirty days before the termination of this agreement. As to any pictures in course of production at the expiration of this agreement, the party of the second part will complete the same.

This agreement may, at the option of the party of the first part, be extended for a further term of three (3) years from the date hereinbefore fixed for its termination, provided written notice is given to the party of the second part on or before May 1st, 1926. In the event that such notice is given, then these presents shall continue in force during the extended period upon the same terms and conditions as apply to the original term of three years, except that the salary of said Mayer for the optional period shall be \$2000.00 per week, and the salary of said Thalberg shall be \$1000.00 per week and providing further, that during each of said first two years of the term of this contract, there shall have been made not less than fifteen pictures. If, after the first two years of the term of this agreement, there shall be produced in any one year less than fifteen pictures, then the party of the second part, shall have the right to terminate this agreement upon ninety (90) days written notice to the party of the first part.

2531

2532

The party of the second part agrees, simultaneously with the execution of these presents, to procure the written consent to this agreement of Louis B. Mayer, Irving Thalberg and J. Robert Rubin, who hereby agree to be bound by all terms and conditions hereof insofar as they refer to them as individuals.

It is agreed that the services of the party of the second part and all those individuals (its personnel) herein specifically mentioned, are of a special, extraordinary and unique nature because of the skill, knowledge and experi-

*Defendants' Exhibit 33 (continued).*

ence of the party of the second part, its personnel and employees, and that the party of the first part will suffer irreparable injury which cannot be compensated by damages obtained at law, if the party of the second part shall breach this agreement. It is therefore expressly understood and agreed that the party of the first part, shall have the right to obtain appropriate and proper injunctive or other relief in equity therefor.

2533

In WITNESS WHEREOF, the parties hereto have caused these presents to be signed and sealed the day and year first above written.

**METRO PICTURES CORPORATION**By **MARCUS LOEW**

Pres.

2534

**LOUIS B. MAYER PICTURES, INC.**By **LOUIS B. MAYER****L. B. MAYER****I. THALBERG****J. ROBERT RUBIN**

STATE OF NEW YORK,

CITY &amp; COUNTY OF NEW YORK, } ss.:

On this 10th day of April, 1924, before me came **MARCUS LOEW**, to me known, who being by me duly sworn did depose and say: that he resides in the City of New York; that he is the **PRESIDENT OF METRO PICTURES CORPORATION**, the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

2535

**LEOPOLD FRIEDMAN**

Comm. of Deeds,

N. Y. City.

*Defendants' Exhibit 33 (continued).*

2536

STATE OF NEW YORK, }  
 CITY & COUNTY OF NEW YORK, } ss.:

On this 10th day of April, 1924, before me came LOUIS B. MAYER, to me known, who being by me duly sworn did depose and say: that he resides in Los Angeles, California; that he is the President of Louis B. Mayer Pictures, Inc. the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed to said instrument by order of the board of directors of said corporation; and that he signed his name thereto by like order.

2537

LEOPOLD FRIEDMAN

Comm. of Deeds,

N. Y. City.

STATE OF NEW YORK, }  
 CITY & COUNTY OF NEW YORK, } ss.:

On this 10th day of April, 1924, before me personally came LOUIS B. MAYER, IRVING THALBERG and J. ROBERT RUBIN, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they severally duly acknowledged to me that they executed the same.

2538

LEOPOLD FRIEDMAN

Comm. of Deeds,

N. Y. City.

*Defendants' Exhibit 33 (continued).*

**EXHIBIT A.**

2539

**CONTRACTS.**

**FRED NIBLO**, after "RED LILY" now being begun, five (5) additional pictures.

**REGINALD BARKER**, "DIXIE" now being begun and two (2) more.

**JOHN M. STAHL**, Two (2) pictures as set forth in the main agreement.

**HOBART HENLEY**, "FREE LOVE" and three (3) more with option for four (4) additional pictures.

**ELINOR GLYN**, "His Hour" and one (1) additional story, with an option of one (1) more.

2540

**HARRY RAPF**, three (3) pictures.

**HUNTLEY GORDON**

**RENE ABOREE**

**NORMA SHEARER**

**ROBERT FRAZIER**

**BENJAMIN F. GLAZER**

**HEDDA HOPPER**

2541



## Defendants' Exhibit 33 (continued).

## SCHEDULE B.

## STUDIO EQUIPMENT, ETC.

2542

CAMERAS & ACCESSORIES	16,994.75
AUTOS AND TRUCKS	6,743.46
OFFICE EQUIPMENT	4,421.00

## ELECTRICAL EQUIPMENT:

Generator Set	9,236.97	
Wind Machines	1,976.94	
Lights	3,870.85	
Miscellaneous	249.50	15,334.26

GENERAL STORES	840.70
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2543

STEREOPTICON LIBRARY OF International views for Research purposes	881.38
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FILM LIBRARY—See Footnote	11,816.70
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MISCELLANEOUS STUDIO MATERIAL	994.45
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WARDROBE—Replacement Value \$12,000.	
Depreciated Value	6,000.00

SCENERY—Consisting of Flats, Doors, Win- dows, Arches, Sections, Fire Place Mantels, Parallels, Niggers—Replacement Value \$14,527.88. Depreciated Value	7,263.94
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PROPS	1,270.50
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918 Shares of Cinema Mercantile Stock at \$10.	9,180.00
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2544

Cash Surrender Value of life insurance policy— John M. Stahl	884.75
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 \$82,625.89

FILM LIBRARY—This consists of 125,000 feet of negative and 75,000 feet of positive of unique stock shots available for current production. The value of this material would range, when used, from \$1. to \$5, per foot for negative. It is here included however, at only the cost of the raw stock and development—5½¢ per foot, plus \$816.70 for clerical labor in classifying and cataloging this material.

STUDIO EQUIPMENT, ETC.	\$82,625.89
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NEW YORK OFFICE EQUIPMENT, per Schedule	3,958.00
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## TOTAL

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 \$86,583.89

FINALLY SET AT

---

 \$86,583.89

## Defendants' Exhibit 33 (continued).

## STORIES

2545

GREATER LIGHT	5,016.00
EVERY WOMAN'S EXPERIENCE	2,000.00
ANGER	1,000.00
JUDGMENT OF MEN	1,000.00
PLAYTHINGS OF DESIRE	1,200.00
FOOLISH YOUTH	500.00
WATCH YOUR WIFE	800.00
IS MARRIAGE A FAILURE	500.00
BITTER CUP	800.00
FLAMES OF BLUE RIDGE	4,500.00
NOTHING TO WEAR (Los Angeles)	5,342.00
SPAN OF LIFE—Story \$4,000. Continuity	
\$6,148.00	10,148.00
THE HERO	1,800.00
THE MIDDLEMAN	7,500.00
VOLUNTEER ORGANIST	7,500.00
FASHIONS FOR MEN	5,500.00
TRIAL OF '98—Story 16,500. Continuity 3,572.	20,072.00
THE WANING SEX	11,008.00
MARRIED STRANGERS	1,500.00
	<hr/>
	\$87,686.00

2546

## PICTURES IN PROGRESS

2547

HIS HOUR  
FREE LOVE  
DIXIE

ENEMIES BY COMMAND  
GREAT DIVIDE

*Defendants' Exhibit 33 (continued).*

2548

COPY

April 9, 1924.

Louis B. Mayer Pictures, Inc.,  
3800 Mission Road,  
Los Angeles, Cal.

Gentlemen:—

2549

Upon the delivery of the motion picture "BROKEN BARRIERS," the advance to be paid you on delivery, shall be increased by the sum of Fifty one thousand (\$51,000.) Dollars, which represents the excess cost of production of the pictures, "THE ETERNAL STRUGGLE," and "WOMEN WHO GIVE." Said excess cost to be treated as part of the negative cost of "BROKEN BARRIERS," in accordance with the terms of the agreement between Metro Pictures Corporation and Louis B. Mayer Productions, Inc. assigned by the latter to Louis B. Mayer Pictures, Inc.

The foregoing understanding is to form part of the contract above referred to.

Yours very truly,

METRO PICTURES CORPORATION,

By MARCUS LOEW,  
Pres.

2550

ACCEPTED:—

LOUIS B. MAYER PICTURES, INC.,  
By E. B. MAYER, Pres.

*Defendants' Exhibit 33 (continued).*

COPY O

2551

April 9, 1924.

Louis B. Mayer Pictures, Inc.,  
3800 Mission Road,  
Los Angeles, Calif.

Gentlemen:—

In respect to the cost of production of the motion picture photoplays "STRANGERS OF THE NIGHT" and "THY NAME IS WOMAN," the sum of \$58062.99 is to be paid within eight months from the date hereof and the amount thereof to be added to an advance against the picture "STRANGERS OF THE NIGHT," and if there is not sufficient return from the 70% of the gross receipts of "STRANGERS OF THE NIGHT," to repay the aforesaid sum, then and in that event, the deficiency shall be charged as an advance against the negative cost of the motion picture "THY NAME IS WOMAN," and shall be recouped in each instance by the Metro Pictures Corporation in accordance with the terms of the agreement between Metro Pictures Corporation and Louis B. Mayer Productions, Inc.

2552

This shall be considered as part of the contract between Metro Pictures Corporation and Louis B. Mayer Productions Inc. covering Fred Niblo.

2553

Yours very truly,

METRO PICTURES CORPORATION,

By MARCUS LOEW,

Pres.

ACCEPTED:—

LOUIS B. MAYER PICTURES, INC.,  
By L. B. MAYER, Pres.

*Defendants' Exhibit 33 (continued).*

2554

COPY

April 10th, 1924.

Louis B. Mayer Pictures, Inc.,  
3800 Mission Road,  
Los Angeles, Cal.

Gentlemen:—

In reference to the contract executed this day between Metro Pictures Corporation and yourself, it is understood and agreed that in the event that there is a merger between Metro Pictures Corporation and Goldwyn Pictures Corp. the motion picture "GREED" produced by the Goldwyn Pictures Corp. shall not be included and be considered as one of the pictures produced under said agreement.

It is also provided in said contract (for the purchase of determining your compensation) that the pictures produced are to be placed in groups of four. It is expressly understood that the picture "BEN HUR" (which is included in our agreement) shall be considered entirely separate from any group.

It is well, at this time to state, that in the contract this day executed simultaneously with this letter, it is contemplated that a merger will take place between Metro Pictures Corporation and Goldwyn Pictures Corp.; that the pictures to be produced under said agreement shall be such pictures as are incomplete and in the process of making in the Goldwyn Pictures Corp. and in the Metro Pictures Corporation, as well as Louis B. Mayer Pictures, Inc.

In the event that Metro Pictures Corporation does not merge with Goldwyn Pictures Corp. their Goldwyn Pictures will be excluded from the consideration of the contract.

Yours very truly,

METRO PICTURES CORPORATION,

By MARCUS LOEW,

Pres.

ACCEPTED:—

LOUIS B. MAYER PICTURES, INC.,

By L. B. MAYER, Pres.

2555

2556



*Defendants' Exhibit 33 (continued).*

October 6th, 1925.

2557

METRO GOLDWYN PICTURES CORPORATION  
Attention Mr. Nicholas M. Schenck,  
1540 Broadway  
New York, N. Y.

Gentlemen:

This is to confirm the oral arrangement made between us yesterday in reference to the modification of the contract existing between Metro-Goldwyn Pictures Corporation and Louis B. Mayer Pictures Inc., dated April 9th, 1924, which modifications are as follows:

2558

1-(a) Metro Goldwyn Pictures Corporation guarantees Louis B. Mayer Pictures, Inc. that the twenty per cent (20%) of the net profits provided to be paid to the said Louis B. Mayer Pictures, Inc., under said agreement of April 9th, 1924, shall, for each year's pictures released during the life of the aforesaid agreement, as amended herein, be not less than \$500,000.00.

(b) Each year's pictures shall be the pictures released or pre-released during the period from July 15th of one year up to and including July 14th of the following year.

(c) The aforesaid guarantee of twenty per cent (20%) shall be advanced to Louis B. Mayer Pictures, Inc., in four (4) quarterly installments of \$125,000.00 each, beginning November 1st of each year, and continuing at intervals of three (3) months apart, until the whole \$500,000.00 has been paid.

2559

(d) The guarantee is to go into effect at once, and shall cover the product released during the season 1925-1926 and 1926-1927, and the first payment hereunder shall be due on November 1st, 1925, and shall not apply to pictures released prior to July 15th, 1925.

*Defendants' Exhibit 33 (continued)*

2560. (e) Metro Goldwyn Pictures Corporation may retain the percentage due Louis B. Mayer Pictures, Inc., on account of the pictures against which a guaranteed advance has been paid, until it has repaid itself therefrom the \$500,000.00 advanced; thereafter it shall continue to pay the said percentages, as provided in the agreement, of April 9th, 1924.

2561. (f) Should, however, the percentages payable to the Louis B. Mayer Pictures, Inc. for the pictures released during the seasons 1925-1926 and 1926-1927 for which said guarantee is made be less than the aforesaid \$500,000.00 per year; and should the Louis B. Mayer Pictures, Inc. continue thereafter to produce pictures as provided for in Paragraph (h) herein, then in that event all percentages of profits payable to the Louis B. Mayer Pictures Inc. on account of pictures released during the season of 1927-1928 in excess of Five Hundred Thousand Dollars (\$500,000.00) may be applied by the Metro Goldwyn Pictures Corporation in repaying itself any deficits that have accrued by reason of the payment of said guaranteed percentages during the seasons 1925-1926 and 1926-1927.

2562. (g) Should Louis B. Mayer Pictures, Inc. not continue to produce pictures after the season 1926-1927 as above provided, and the percentages payable to Louis B. Mayer Pictures, Inc. for the pictures released during the season 1925-1926 be less than the guarantee of Five Hundred Thousand Dollars, then and in that event all percentages of profits payable to Louis B. Mayer Pictures Inc. on account of pictures released during the season 1926-1927 in excess of the guarantee of Five Hundred Thousand Dollars may be applied by Metro-Goldwyn Pictures Corporation in repaying itself any deficits that may have accrued, by reason of the payment of said guaranteed percentages for the season 1925-1926 and similarly if the percentages payable to Louis B. Mayer Pictures, Inc. for pictures to be

*Defendants' Exhibit 33 (continued):*

released during the season 1926-1927 be less than the guarantee of \$500,000, then and in that event all percentages of profits payable to Louis B. Mayer Pictures, Inc. on account of pictures released during the season 1925-1926 in excess of the guarantee of \$500,000.00 may be applied by Metro-Goldwyn Pictures Corporation in repaying itself any deficits that may have accrued by reason of the payment of said guarantee percentages for the season 1926-1927.

2563

(h) The aforesaid \$500,000 guarantee is based upon the understanding that Metro-Goldwyn-Mayer Studios (unless a lesser number of pictures is requested by Metro-Goldwyn Pictures Corporation) shall produce and have ready for release in each year not less than forty four pictures. In the event, however, that the studios shall fail to produce in said year the said forty-four pictures, the aforesaid guarantee shall be reduced proportionate to the number of pictures so produced and ready for release. This production is to be made from the last payment due under said guarantee for the particular year.

2564

Should the contract of April 9th, 1924, (as amended herein) terminate according to its original provisions, that is, April 9th, 1927, then and in that event the guarantee to be paid in respect to the pictures to be released during the season 1926-1927 shall (anything hereinbefore contained to the contrary notwithstanding) be that portion of \$500,000 which the number of pictures completed and ready for release on the 9th day of April, 1927, shall bear to forty-four as above provided; for example, if on April 9, 1927, there shall be finished and ready for release twenty two pictures then the guarantee shall be \$250,000.00, or if there shall be completed and ready for release forty four pictures, then the guarantee shall be \$500,000.

2565

(i) Metro-Goldwyn Pictures Corporation may, however, withdraw said guarantee for any year, (except for the years

*Defendants' Exhibit 33 (continued).*

2566 above provided) by notifying Louis B. Mayer Pictures Inc. in writing, on or before June 1st of any year, that it elects not to pay the said guarantee on account of pictures to be released in the following year, as above defined. Thereupon the said Louis B. Mayer Pictures, Inc. may terminate the agreement of April 9, 1924, as herein amended, by notifying Metro-Goldwyn Pictures Corporation, in writing, on or before July 1st following said notice that said agreement, as amended, shall terminate as of October 1st following.

2567 Unless said contract is so terminated, it shall continue and the pictures released during that year, as herein defined, shall be distributed as provided in the contract, but no guaranteed advance shall be made; but, at the end of the year, the guarantee herein provided shall again apply, unless Metro-Goldwyn Pictures Corporation shall on June 1st following the last notice again notify Louis B. Mayer Pictures, Inc. that it elects not to pay said guarantee for the pictures to be released during the following year.

2568 It is the intention of the parties that the guarantee shall be paid for each year's product, as above provided, unless notice is sent by Metro-Goldwyn Pictures Corporation on June 1st of any year, as above provided, and that Louis B. Mayer Pictures Inc. and Messrs. Mayer, Rubin and Thalberg shall likewise continue under this agreement unless the said guarantee has been withdrawn, as aforesaid, and the Louis B. Mayer Pictures, Inc., has terminated the agreement, as herein provided after the receipt of said notice of withdrawal.

2. It is also understood that the agreement of April 9, 1924, is further modified by providing that the option therein granted Metro-Goldwyn Pictures Corporation to continue the services of Louis B. Mayer Pictures, Inc., Mr. Mayer, Mr. Rubin and Mr. Thalberg shall be for a period of five years from April 9, 1927, instead of three years,

*Defendants' Exhibit 33 (continued).*

and that the salaries to be paid during the optional period to Mr. Mayer, Mr. Rubin and Mr. Thalberg shall be respectively, \$2,500., \$1,000., and \$2,000. 2569

If this conforms to your understanding, will you kindly sign the annexed copy, under the words "As agreed."

Very truly yours,

LOUIS B. MAYER PICTURES, INC.,  
by LOUIS B. MAYER, Pres.

As Agreed

METRO GOLDWYN PICTURES CORPORATION  
by N. M. SCHENCK, Vice Pres.

2570

We, the undersigned, hereby agree to be bound by the terms of this amended agreement of October 6th, 1925, and hereby agree to give our services according to the terms and conditions of the agreement of April 9, 1924, as modified heretofore and herein.

LOUIS B. MAYER  
J. R. RUBIN  
IRVING G. THALBERG

2571



# MICRO CARD

# 22

TRADE

MARK



# 39



# 1415

# 65



*Defendants' Exhibit 33 (continued).*

2572

**J. ROBERT RUBIN  
COUNSELLOR AT LAW**

Phone Cortlandt 323

165 Broadway

Cable Address Röbrub, New York

New York

April 19, 1926

Metro-Goldwyn Pictures Corporation  
1540 Broadway,  
New York City.

2573

Gentlemen:

Louis B. Mayer, J. Robert Rubin and Irving Thalberg have formed a co-partnership under the names Louis B. Mayer Pictures, for the purpose of carrying on the various functions they have heretofore carried on in connection with Louis B. Mayer Pictures Inc.

2574

By agreement dated November 28, 1925, said Louis B. Mayer Pictures Inc. did assign and transfer to the new co-partnership composed of Louis B. Mayer, J. Robert Rubin and Irving Thalberg, all of its right, title and interest in and to the contract of April 9, 1924, as amended, between Louis B. Mayer Pictures Inc. and Metro Pictures Corporation (now known as Metro-Goldwyn Pictures Corporation) and Louis B. Mayer, J. Robert Rubin and Irving Thalberg.

The newly created co-partnership composed as aforesaid, together with the individuals constituting the same have accepted and do hereby reaffirm their acceptance of the assignment of the foregoing contract as amended and agree to carry out all of the terms, covenants and conditions of said contract, as amended.

Since the assignment of the aforesaid contract it is desired to dissolve the Louis B. Mayer Pictures Inc. and to

*Defendants' Exhibit 33 (continued).*

obtain your consent to this dissolution; and to the payment of all future remittances to Louis B. Mayer Pictures instead of Louis B. Mayer Pictures Inc. 2575

Will you kindly evidence your consent to the dissolution of the corporation, the assignment of the contract and the payment to Louis B. Mayer Pictures by subscribing your name under the words "Accepted."

Yours very truly,

LOUIS B. MAYER PICTURES INC.

By: J. ROBERT RUBIN

Secretary

2576

ACCEPTED:

METRO-GOLDWYN PICTURES CORP.,

By N. M. SCHENCK

Vice-Pres.

LOUIS B. MAYER PICTURES

LOUIS B. MAYER

I. THALBERG

J. ROBERT RUBIN

2577

*Defendants' Exhibit 33 (continued).*

2578

**THE AMBASSADOR**

LOS ANGELES Oct. 15, 1926

Mr. Nicholas M. Schenck,  
 Metro Goldwyn Mayer Corporation,  
 1540 Broadway,  
 New York City.

My dear Nick:—

2579

You have asked me to state to you if the arrangement that you and I have made in reference to my annual income from my services and percentages in connection with the Metro Goldwyn Mayer Pictures as hereinafter provided that I will consider this adjustment final and shall not ask for any new financial arrangement during the term of the present contract. That I gladly promise. I can assure you with that arrangement I am perfectly happy and contented and shall be for the remainder of the period of the present agreement and shall not ask for a further adjustment or any additional financial arrangement. I can now devote myself fully to my labors and feel that my future is assured and protected. The arrangement is a most happy one.

2580

My understanding of the terms of my new arrangement is as follows. I am to receive a salary of four thousand dollars a week, and am to be guaranteed that my percentage interest in Louis B. Mayer Pictures shall equal the difference between my salary and four hundred thousand dollars per annum. In other words my yearly compensation or income shall equal four hundred thousand dollars. The percentages are to be paid me quarterly beginning from September first, 1926.

Let me take this occasion to thank you for your courteous treatment and your understanding of my problem. With kindest regards and best wishes, I am,

Yours sincerely,

(Signed) IRVING G. THALBERG.

*Defendants' Exhibit 33 (continued).*

AGREEMENT made February 16, 1927, between LOEW'S INCORPORATED, a Delaware corporation and sometimes referred to herein as LOEW'S, and LOUIS B. MAYER, J. ROBERT RUBIN and IRVING THALBERG, as co-partners operating under the trade name and title of LOUIS B. MAYER PICTURES, and sometimes referred to herein as the partnership, and METRO-GOLDWYN PICTURES CORPORATION, a Delaware corporation.

2581

WHEREAS, METRO PICTURES CORPORATION and its successor METRO-GOLDWYN PICTURES CORPORATION, each subsidiaries of LOEW'S, heretofore contracted that LOUIS B. MAYER PICTURES, INC. would exclusively supervise the production of motion pictures to be made and distributed by METRO (METRO-GOLDWYN), by contract dated April 7, 1924, which was modified and supplemented by agreement dated October 6, 1925, ~~and by writing dated April 19, 1926,~~ it was consented that said LOUIS B. MAYER PICTURES, INC. be dissolved, and in its place be substituted the aforesaid partnership LOUIS B. MAYER PICTURES; and

2582

WHEREAS, the parties now desire mutually to change and modify the said agreements as now in force;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

2583

The agreements aforesaid are hereby taken over from METRO-GOLDWYN PICTURES CORPORATION by said LOEW'S and assumed by said LOEW'S, all as herein modified, and as of and after September 1st, 1926, LOEW'S is hereby made a party thereto with METRO-GOLDWYN PICTURES CORPORATION until April 7, 1932 and hereby obligates itself to said partnership as to all the terms and provisions of said agreements as herein modified until April 7, 1932, after which LOEW'S shall no longer be a party hereto, but METRO-GOLD-



*Defendants' Exhibit 33 (continued)*

2584 WYN PICTURES CORPORATION shall thereafter be solely liable hereunder.

The said agreements are hereby modify as of September 1st, 1926, as follows:

(1) The term is hereby extended to April 7th, 1932, and with no provisions for further extension.

2585 (2) In substitution and in lieu of the compensation to the partnership LOUIS B. MAYER PICTURES of twenty per cent (20%) of the net profits (as therein defined) from the sale and distribution of productions made and to be made thereunder, it is agreed that on and after September 1st, 1926, and for and during the term of this agreement expiring April 7th, 1932, the said partnership shall receive from and be paid by LOEW'S, a sum equal to the following percentage of the combined annual net profits of LOEW'S INCORPORATED and all its subsidiaries and its companies and ventures for such period, said sum to be determined as follows:—There shall be deducted from such combined net profits a sum proportionate to \$2,121,560. per year (which represents \$2.00 per share on its present issued and outstanding capital stock) and in this the partnership shall have no percentage. On remaining net profits up to a sum proportionate to the next \$2,500,000. per year, the partnership shall have and receive a sum equal to twenty per cent (20%) thereof, and on all further net profits (that is net profits over and above said \$2,121,560. and the next \$2,500,000. per year) the partnership shall receive a sum equal to fifteen percent (15%) thereof.

2586

During the term of this agreement if LOEW'S should issue additional shares of the said no par value stock of LOEW'S INCORPORATED, and sell or exchange them for a bona fide consideration in cash or property, approximately equal to the then market value of such stock, in that event

*Defendants' Exhibit 33 (continued).*

for each said additional share so sold or exchanged, the sum of \$2.00 shall then and thereafter be added to the said first \$2,121,560. per year, on which the partnership is to have no percentage. Anything hereinbefore contained to the contrary notwithstanding, it is agreed that any stock issued upon the exercise of the present outstanding stock purchase warrants, or any other stock hereafter issued upon the exercise of stock purchase warrants given by LOEW's, in connection with future financing by way of bonds, debentures or preferred stock; shall be considered as part of the issued capital stock for which an allowance of \$2.00 per share shall be added to the amount of dividends allowed before determining compensation of the partnership. The said combined net profits shall be computed and ascertained by sound accounting methods, but it is agreed that in computing and ascertaining said net profits that the present accounting methods and practices of LOEW's and its said subsidiaries and ventures, as they have been applied and followed since April, 1924, are now generally approved by all parties and are recognized as "sound accounting methods" in the sense that this term is used herein, and the theory and practise so heretofore followed shall be a general guide to all accounting hereunder. The combined net profits above referred to shall be LOEW's share (direct and indirect) of the combined net earnings and profits of all companies, subsidiaries and ventures in which LOEW's shall have any direct or indirect interest by stock ownership or otherwise, for the particular period, and it is understood that the same shall be taken from their combined statement of profit and loss, determined as herein provided, and that both the operating losses and profits of particular companies or ventures shall be reflected in such combined net profit account for the particular period. Income and corporate taxes, State and Federal, for the particular period only are to be deducted first in determining such net profits,

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2589

*Defendants Exhibit 33 (continued).*

2590 except that taxes arising from profits on property where  
 such profit is not included as income for the benefit of  
 the partnership shall not be charged in this computation.  
 In this computation neither profits nor losses from sales  
 or exchanges of real estate buildings or leaseholds, or  
 stocks in corporations owning real estate, buildings or  
 leaseholds where the property or stock was purchased  
 prior to September 1, 1926, shall be included, nor shall  
 such profits or losses be included where a sale takes place  
 after April 7, 1932, but where both the purchase, and the  
 sale or exchange, take place within the period of this  
 agreement, such profits and losses shall be included.  
 2591 Where all or part of the said sale price is in other than  
 cash, the profit represented by other than cash shall not  
 be reflected as income until such part of the purchase  
 price, not cash, is actually paid or realized upon; and  
 if such payment or realization takes place after April 7,  
 1932, nevertheless the accounts shall then be adjusted to  
 give the partnership benefit thereof.

(3) The fact that dividends are or are not declared by  
 any of the said companies or ventures or the amount of  
 dividends declared, shall not be taken into consideration,  
 but the said combined net profits shall be computed solely  
 on the basis of LOEW's direct or indirect actual share in  
 2592 all net profits for the period, provided always that in  
 the case of companies or ventures where LOEW's has less  
 than a twenty-five percent (25%) interest or ownership  
 by way of common or voting stock, (as for example, those  
 listed in Ex. A annexed where such is now a fact) the  
 profit and loss account of such are not to be shown or  
 included in the combined net profits account of LOEW's  
 but if LOEW's receives any dividend or any return from  
 the same during the period of this agreement, than such  
 to the extent they actually belong to LOEW's and are  
 earned during the period of this agreement are to be shown

*Defendants' Exhibit 33 (continued).*

as receipts in said combined net profit account, and if such dividends or receipts are received after the period of this agreement, the partnership shall then receive an adjustment by reason thereof based upon the proportionate part thereof earned by such company or venture during the period of this agreement.

2593

(4) Where preferred stock of a company is outstanding and held by others than LOEW's (as for example, in Metro-Goldwyn Pictures Corporation) the preferential interest payable on such stock shall (to the extent such stock is not owned by LOEW's) be a charge first to be deducted before LOEW's share of net profits is computed, as the same is deemed to represent the share of profits of METRO-GOLDWYN PICTURES CORPORATION belonging to others than LOEW's. Similarly, if LOEW's should hereafter create and sell and issue or issues of preferred stock, then the required cumulative dividends on such preferred stock, (not exceeding seven percent (7%) per annum) shall first be deducted annually as an expense in determining compensation of the partnership. Sinking fund requirements for stock, bonds or debt, shall not be a charge, but interest on bonds, mortgages and money borrowed shall be a charge, and bonuses and expenses in connection therewith or in connection with issues of preferred stock may be amortized and charged.

2594

(5) For the purposes of this agreement annual depreciation shall be computed and allowed on present real and personal property and on that hereafter acquired during the term of this agreement, at the rate and in the same manner as is now done by LOEW's, and such depreciation shall constitute a deduction in determining net profits, except

2595

(a) no depreciation whatever shall be charged or deducted as to the Hollywood Studio.

*Defendants' Exhibit 33 (continued).*

(b) all buildings (excepting those of the said Hollywood Studio and those of the Culver City Studio) which are owned in fee shall be depreciated annually only to one-half the extent as is now done by LOEW'S. "Owned in fee" as here used shall mean that where 51% or more of the aggregate value of the land on which the building is erected is owned in fee, then the building is considered as owned in fee.

(c) No depreciation shall be charged on newly constructed theatres from the date of their opening to the end of the then fiscal year.

(6) Reserves for proper purposes may be set up to the extent sound accounting methods shall make essential, but not in excess thereof. If any reserves shall be set up for future contingent liability or otherwise, with the effect of then reducing the amount of combined net profits due the partnership, and it later appears that such reserves have proven to be excessive, or by sound accounting methods the same shall later be reduced wholly or in part, the partnership shall then be entitled to such additional sums as would be due it if the reserve had originally been for the lesser amount; and if any said reserves are found later to be insufficient, in the same manner LOEW'S shall be entitled to recover accordingly from the partnership or may deduct such sums against any further sums due the partnership. Such adjustment shall be made to either party even though the period of the contract has expired, but shall not be made after five years from April 7, 1932. Depreciation for purposes hereof shall not be deemed a reserve.

(7) At the termination of this agreement (April 7th, 1932) the compensation to the partnership of said per-



*Defendants' Exhibit 33 (continued).*

centage of said combined net profits shall cease, but com- 2599  
 mencing on said date, the partnership shall thereafter  
 receive and be paid by METRO-GOLDWYN PICTURES CORPO-  
 RATION a sum equal to twenty percent (20%) of the net  
 profits from the further distribution after such date, of  
 all pictures produced under the said supervision of the  
 partnership from April 7th, 1924 to April 7th, 1932, so  
 long as there shall be receipts therefrom. Such net dis-  
 tribution profits shall be the gross receipts from the  
 license, use and/or distribution of said pictures, less actual  
 cost of distribution, and less production cost not already  
 charged off before September 1st, 1926, or charged off in  
 the said combined net profit account for the period of this  
 agreement, and such distribution profits shall be com- 2600  
 puted as provided in the agreement of April 7, 1924, except  
 that the charge for distribution hereafter shall be the  
 actual net cost thereof rather than the fixed thirty percent  
 (30%) otherwise provided in the contract of April 7,  
 1924. The returns from pictures after April 7, 1932,  
 shall be considered and accounted for (except Ben Hur)  
 in groups of four (4) in order of release date, as provided  
 in the agreement of April 7, 1924. Returns from the  
 reissue of any picture shall be considered returns from  
 the said original picture. Remakes shall not be made until  
 five (5) years after the first picture's release, nor shall  
 story rights be sold within such period. After such period, 2601  
 pictures may be remade or stories of pictures made sold,  
 and then the only interest the partnership shall have  
 therein shall be in Metro-Goldwyn's interest in the story  
 value, twenty percent (20%) whereof shall be paid to the  
 partnership at the time of remake or sale. If the parties  
 cannot agree on such story value, it shall be fixed by arbi-  
 tration under the "Arbitration Law" of the State of New  
 York as it shall then be in effect.

Such twenty percent (20%) interest in pictures and  
 stories values shall not give the partnership any lien

*Defendants' Exhibit 33 (continued).*

2602 or property right in said stories or pictures, but it shall have the right of compensation from METRO-GOLDWYN.

(8) Effective from and after September 1, 1926, the following guarantee is hereby made to the partnership by LOEW's in lieu of all other guarantee provisions. There shall be paid the partnership by LOEW's a guaranteed sum at the rate of \$500,000.00 per year until April 7, 1932, payable in thirteen (13) equal installments every four (4) weeks at the end of such period of four weeks. A tentative combined net profit statement of LOEW's, showing the approximate sum due the partnership for each such four week period shall be rendered the partnership by LOEW's before the end of the next succeeding period. If such tentative statement shows that the partnership was then entitled to an excess beyond the sums already paid to it, Fifty percent (50%) of such excess shall then be paid the partnership. If it should show that more had been paid than was due, the next following guarantee installment may be reduced to that extent, but never to less than a sum which will maintain the guaranteed sum to that date.

2603

(9) Within four (4) months after the end of each year (September 1st to September 1st) LOEW's shall furnish the partnership with a detailed and audited combined net profit statement of all its said companies and ventures computed as herein provided, and the percentage due the partnership for said year shall then be formally ascertained by the parties according to the terms of this agreement, and any excess due and unpaid for such year shall then be paid to the partnership. Each two year period commencing September 1st (1926-1928, 1928-1930), and the last period from September 1st, 1930 to April 7th, 1932, shall be considered as three (3) separate accounting and settlement periods, as follows:—In each said period at the close thereof the accounts for that period shall be

2604

*Defendants' Exhibit 33 (continued).*

finally settled (except as to factors not there appearing or known, such as delayed dividends from less than twenty-five percent (25%) owned companies, and excess or too small reserves) and such account shall then be settled without reference to prior periods, and for the next period the account shall begin anew. In each said period the partnership shall always receive and retain the guaranteed rate and it shall never to any date fall below the same, but the partnership for such period shall not be entitled to receive more than the said guarantee unless it has earned (as shown by the tentative monthly reports in the first year of the period and the prior annual account and subsequent monthly statements in the second year) more than the rate of guarantee, and if the amount found due after the first year of the period is less than the guarantee, the guarantee shall continue but that sum may be set off against any excess of earnings over the guarantee during the last (second) year of the said period. 2605 2606

(10) The partnership shall have full access to all reasonable times through its members and agents to all books, records, accounts and contracts of Loew's and its said companies and ventures, and may audit and examine the same during the period the partnership shall have rights to the payment of any sums hereunder, and Loew's agrees that it will keep and preserve (or cause the same to be done) full, true and correct books, records, accounts and entries relating to all dealings, transactions and properties affecting both net profits (or such gross income and expenses of distribution after April 7, 1932.) The partnership shall also be kept currently informed as to bookings and earnings of all pictures made hereunder and given any information desirable to ascertain the trade value of the various types of pictures produced. 2607

(11) It is understood that the partnership accepts the newly provided percentage of the combined net profits of

*Defendants' Exhibit 33 (continued).*

2608 LOEW's with the understanding that it shall receive until April 7, 1932, a sum equal to such percentage from such combined net profits as herein defined of all companies and ventures in which LOEW's has or hereafter shall acquire an interest; and that in event that METRO-GOLDWYN shall cease to be a subsidiary of LOEW's the combined net profits from all sources and ventures, including METRO-GOLDWYN shall be computed and included in the net profits of LOEW's as if no change had so occurred.

2609 (12) All provisions for the salaries to the said individual members of the partnership and the cost of the partnership's New York office shall continue and are separate and in addition to the percentage compensation to the partnership here provided and said salaries shall continue at the rate now (January 1, 1927) paid, except the salary of LOUIS B. MAYER shall be \$2500.00 per week after April 7, 1927, as provided in the contract of October 6, 1925. Such shall be a proper cost charge in computing combined net profits, but the percentage compensation to the partnership shall not be a cost in such computation.

(13) Consent that the partnership be substituted in place of LOUIS B. MAYER PICTURES, INC. (the corporation originally entering into this agreement) is hereby reaffirmed.

2610 The paragraph of the contract of April 7, 1924, granting rights of termination upon death of Louis B. Mayer, or simultaneous incapacity of Mayer and Thalberg for six months, is entirely eliminated and the following substituted:

In the event of the death of Louis B. Mayer, Irving Thalberg or J. Robert Rubin, or the incapacity of any of them for a continuous period of over six months; LOEW's thereupon shall have the right to reduce the percentage compensation to the partnership from the combined net profits of LOEW's, by thereafter deducting as to said de-

*Defendants' Exhibit 33 (continued).*

ceased or incapacitated partner, his partnership share thereof, which said share shall be the same percentage as now owned by each in the partnership. If the remaining partners shall provide a substitute satisfactory to Loew's the full percentage shall again be paid to the partnership, and the cost of such substitute shall be deducted by the partnership from the share of the incapacitated partner. If the said incapacity ceases, within the next following six months after said substitution or said deduction, then the said partner shall resume his duties and continue on as formerly and receive thereafter his said share as formerly but if his incapacity does not cease within such additional six months then such partner shall cease to be a partner. If there is a simultaneous incapacity of any two of the said partners continuing for thirty days, then Loew's has the right to cause the duties of each to be performed by another and to charge the cost thereof against the salary and the share in the partnership of the partner so incapacitated. The death or incapacity of any partner shall not terminate this agreement, or affect it except as above provided, and the percentage due after April 7, 1932, under paragraph (7) herein, shall in all events continue as to each partner or his estate as to all pictures completed (or over half completed) while he was a partner.

2611

2612

2613

(14) The parties have agreed that "BEN HUR" stands alone and in a different position from other productions supervised by the partnership, and it is hereby agreed:

(a) That it shall not be grouped with any other pictures in computing the partnership's twenty percent (20%) share of net distribution profits therefrom after April 7, 1932;

(b) That from September 1, 1926, to April 7, 1932, all receipts therefrom less actual distribution cost and sums due Classical Cinematograph Corporation shall be applied against its production cost; and



## Defendants' Exhibit 33 (continued).

614

(c) That until April 7, 1930, no more shall be charged off than is provided in (b) but after April 7, 1930, the balance of production cost then not so charged off, shall be charged off one-half each year for the two (2) remaining years, and the said share of returns for each said year April 7, 1930-32 shall first be applied thereto, and the balance, if any, necessary to make up such fifty percent (50%) for the said year, shall be charged off in the combined net profit account for each said year.

615

(15) In all other respects the said principal agreement is confirmed and remains effective and is extended to April 7, 1932.

IN WITNESS WHEREOF the parties hereto have caused these presents to be signed and sealed this day and year first above written.

METRO-GOLDWYN PICTURES CORPORATION

By N. M. SCHENCK

(Seal)

Vice-President

LOEW'S INCORPORATED

By N. M. SCHENCK

(Seal)

Vice-President

616

LOUIS B. MAYER

(L. S.)

J. ROBT. RUBIN

(L. S.)

IRVING THALBERG

(L. S.)

Individually and as co-partners of  
Louis B. Mayer Pictures, Inc.

*Defendants Exhibit 33 (continued).*

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.

2617

On this 16th day of February, 1927, before me personally came NICHOLAS M. SCHENCK, to me known, who, being by me duly sworn, did depose and say, that he resides in the Borough of Manhattan, City and County of New York; that he is a Vice-President of METRO-GOLDWYN PICTURES CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

2618

S. S. BRAUNBERG  
Notary Public, Westchester County

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

On this 16th day of February, 1927, before me personally came NICHOLAS M. SCHENCK, to me known, who, being by me duly sworn, did depose and say, that he resides in the Borough of Manhattan, City and County of New York; that he is a Vice President of LOEW'S INCORPORATED, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

2619

S. S. BRAUNBERG  
Notary Public, Westchester County

## Defendants' Exhibit 33 (continued).

2620 STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

On this 16th day of February, 1927, before me personally came and appeared LOUIS B. MAYER to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

S. S. BRAUNBERG  
Notary Public, Westchester County

2621 STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

On this 16th day of February, 1927, before me personally came and appeared J. ROBERT RUBIN, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

S. S. BRAUNBERG  
Notary Public, Westchester County

2622 STATE OF CALIFORNIA, }  
COUNTY OF LOS ANGELES, } ss.:

On this day of February, 1927, before me, a Notary Public in and for the County of Los Angeles, personally appeared IRVING THALBERG, known to me to be the person whose name is subscribed in the within instrument, and acknowledged that he executed the same.

Tel. 9850 Bryant

2623

**LOEW'S INCORPORATED****"THEATRES EVERYWHERE"**

Executive Offices  
Loew Building  
Broadway at 45th Street  
New York

February 16th, 1927.

Mr. Irving Thalberg,  
Culver City, California.

Dear Sir:

This is to confirm the arrangement made by us on October 15th last along the lines of your letter of that date.

You are to continue in the employ of the Metro Goldwyn Mayer Corporation in your present capacity and continue in your present work until April 7th, 1932. You are to receive a salary of Four Thousand Dollars weekly, beginning October 1st, 1926, which, of course, you have been receiving since that date. We hereby guarantee that your income for each of the years of your employment from your said salary and your proportionate share (20%) of the income received by Louis B. Mayer Pictures from its contract with Loew's Incorporated, entered into this day, shall not be less than Four Hundred Thousand Dollars.

In the event that your said salary and your proportionate share of the income of the Louis B. Mayer Pictures shall not equal Four Hundred Thousand Dollars per annum, we agree to make up to you such deficiency. Such deficiency, if any, shall be paid you on or about January 1st of each year covering the previous fiscal year.

In the event that you should be incapacitated as provided in paragraph 13 of the agreement entered into this day between Loew's Incorporated and Louis B. Mayer Pictures, then and in that event the amount deducted from your

*Defendants' Exhibit 33 (continued).*

2626 salary and or percentages under that provision shall likewise be deducted from the guarantee and it shall be reduced by that amount.

During the period from September 1st, 1931, to April 7th, 1932, being less than a year, the guarantee shall be for that proportionate period and shall be paid in the same manner as the yearly guarantee.

This arrangement goes into effect as of September 1st, 1926, insofar as the guarantee is concerned, but the salary of Four Thousand Dollars instead of Two Thousand Dollars is effective as of October 1st, 1926.

2627 We believe this covers all the details of our arrangement, and we have every reason to believe this will be eminently satisfactory to you as well as ourselves, as set forth in your letter of October 15th.

Very truly yours,

LOEW'S INCORPORATED

By N M SCHENCK  
Vice President

Accepted:

Signed IRVING THALBERG

2628 (Seal)

Address all communications to the undersigned company



877  
*Defendants' Exhibit 33 (continued).*

ARS GRATIA ARTIS

2629

METRO-GOLDWYN  
PICTURES

LOEW BUILDING—1540 BROADWAY  
NEW YORK

Legal Department  
J. ROBERT RUBIN  
General Counsel

February 16th, 1927.

Loew's Incorporated,  
1540 Broadway,  
New York, N. Y.

Gentlemen:

2630

In consideration of your agreement to guarantee to Mr. Irving Thalberg the income of Four Hundred Thousand Dollars per year, as set forth in your letter of this day, we agree that in the event that there should be a deficiency between the Four Hundred Thousand Dollars guarantee and the amount that Mr. Thalberg should receive as salary and percentages as set forth in your said letter in any year of the agreement, then and in that event we will pay twenty per cent (20%) of said deficiency. Our payments shall be made at the same time as are yours upon two days' notice from you of the amount due.

Very truly yours,

2631

LOUIS B. MAYER PICTURES,

By LOUIS B. MAYER

J. R. RUBIN.

No agreement or order will be binding on this corporation unless in writing and signed by an officer.

*Defendants' Exhibit 33 (continued).*

2632

AGREEMENT made December 19th 1929, between LOEW'S INCORPORATED, a Delaware corporation and sometimes referred to herein as LOEW'S, and LOUIS B. MAYER, J. ROBERT RUBIN and IRVING THALBERG, as co-partners operating under the trade name and title of LOUIS B. MAYER PICTURES, and sometimes referred to herein as the partnership, and METRO-GOLDWYN PICTURES CORPORATION, a Delaware corporation, sometimes referred to herein as METRO.

2633

WHEREAS, METRO PICTURES CORPORATION and its successor METRO, each subsidiaries of LOEW'S, heretofore contracted that LOUIS B. MAYER PICTURES, INC., since succeeded by LOUIS B. MAYER PICTURES the aforesaid partnership, would exclusively supervise the production of motion pictures to be made and distributed by METRO by contract dated April 7th 1924, which said agreement was modified and supplemented by written agreement dated October 6, 1925, and by written agreement between the parties hereto dated February 16, 1927, and

WHEREAS, the parties now desire mutually to change and modify the said agreements as now in force, in respect to the period of the term thereof;

2634

NOW, THEREFORE, the parties hereto do mutually agree as follows:

The said agreements of April 7th 1924, October 6th 1925 and February 16, 1927, are hereby modified and amended, effective as of this date, as follows:

The term thereof fixed in said agreement of February 16th 1927 as ending April 7th 1932 is hereby extended for a further period of five (5) years, that is until April 7th Nineteen hundred and thirty-seven (1937), and with no farther provision for further extension, and all the parties hereto shall be bound to the terms and conditions

*Defendants' Exhibit 33 (continued).*

of said agreements until April 7th 1937, and wherever the date April 7th 1932 appears in the agreement of February 16th 1927 such date shall be changed to read April 7th 1937, to the end that said agreement shall be read and construed as if it provided originally for its continuance until April 7th 1937, in place of April 7th 1932. Wherever necessary fully to effectuate the foregoing, such other modifications in dates and periods shall be deemed to have been made as the case may require. For example, the second sentence of paragraph "(9)" of said agreement of February 16th 1927 shall be construed (with reference to the two year periods therein referred to) to read "Each two year period commencing September 1st (1926-1928, 1928-1930, 1930-1932, 1932-1934, 1934-1936,) and the last period from September 1st 1936 to April 7th 1937 shall be considered as six (6) separate accounting and settlement periods, as follows:"

2635

2636

IN WITNESS WHEREOF the parties hereto have caused these presents to be signed and sealed this day and year first above written.

METRO-GOLDWYN-PICTURES CORPORATION

By N. M. SCHENCK

President.

LOEW'S INCORPORATED

By N. M. SCHENCK

President.

2637

LOUIS B. MAYER

(L. S.)

J. ROBERT RUBIN

(L. S.)

I. THALBERG

(L. S.)

Individually and as co-partners of

LOUIS B. MAYER PICTURES.

*Defendants' Exhibit 33 (continued).*

338 STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

On this 8th day of May, 1930, before me personally came NICHOLAS M. SCHENCK, to me known, who, being by me duly sworn, did depose and say, that he resides in the Borough of Manhattan, City and County of New York; that he is President of METRO-GOLDWYN PICTURES CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

IRVING H. GREENFIELD

Notary Public,

Kings County

Kings Co. Clerk's No. 16, Register's No. 2022

Cert. Filed N. Y. Co. Clk's No. 114, Reg. No. 2650

Cert. Filed Queens Co. Clk's No. 56, Reg. No. 1479

Commission Expires March 30, 1932

10 STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

On this 8th day of May, 1930, before me personally came NICHOLAS M. SCHENCK, to me known, who, being by me duly sworn, did depose and say, that he resides in the Borough of Manhattan, City and County of New York; that he is President of LOEW'S INCORPORATED, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal;

*Defendants' Exhibit 33 (continued).*

that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. 2641

**IRVING H. GREENFIELD**

Notary Public,

Kings County

Kings Co. Clerk's No. 16, Register's No. 2022

Cert. Filed N. Y. Co. Clk's No. 114, Reg. No. 2650

Cert. Filed Queens Co. Clk's No. 56, Reg. No. 1479

Commission Expires March 30, 1932

STATE OF NEW YORK,  
COUNTY OF NEW YORK, }

ss.:

On this 20th day of December, 1929, before me personally came and appeared LOUIS B. MAYER, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

**ANTONIO C. GONZALEZ**

Notary Public, New York County

New York County Clerk's No. 160

New York Co. Register's No. 0-361

Term Expires March 30, 1930

2642

2643



*Defendants' Exhibit 33 (continued).*

2644 STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

On this 20th day of December, 1929, before me personally came and appeared J. ROBERT RUBIN, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

ANTONIO C. GONZALEZ

Notary Public, New York County  
New York County Clerk's No. 460  
New York Co. Register's No. 0-361  
Term Expires March 30, 1930

2645

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.:

On this 20th day of December, 1929, before me personally came and appeared IRVING THALBERG, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

ANTONIO C. GONZALEZ

Notary Public, New York County  
New York County Clerk's No. 160  
New York Co. Register's No. 0-361  
Term Expires March 30, 1930

2646

**Defendants' Exhibit 34.**

2647

**MINUTES** of the Adjourned Monthly Meeting of the Board of Directors of LOEW'S INCORPORATED, held at the Office of the Company, #1540 Broadway, in the Borough of Manhattan, City of New York, on the 8th day of May, 1930, at four o'clock, P.M.

**PRESENT:—**

NICHOLAS M. SCHIENCK  
 ARTHUR M. LOEW  
 DAVID L. LOEW  
 J. ROBERT RUBIN  
 LEOPOLD FRIEDMAN  
 CHARLES M. SCHWAB  
 JACOB L. RUBENSTEIN, constituting  
 a quorum of the Board

2648

Mr. Nicholas M. Schienck presided as Chairman and Mr. Leopold Friedman acted as Secretary.

The Secretary directed the Board's attention to a consideration of the matter of the agreement with Messrs. Mayer, Thalberg and Rubin (doing business as Louis B. Mayer Pictures) which was the subject of discussion at previous meetings of the Board, and stated that it was proposed to extend the existing agreement for a period of five (5) years from its present expiration date, to wit:—April 7th, 1932.

2649

On motion of Mr. Chas. M. Schwab, seconded by Mr. Jacob L. Rubenstein, the following resolution was duly adopted, (Mr. Rubin not voting):—

**RESOLVED**, that the President be and he hereby is authorized and empowered to execute, acknowledge

*Defendants' Exhibit 34 (continued).*

2650

and deliver for and in behalf of this Company, an agreement (in form submitted to this meeting which had been approved by Counsel) extending the existing contract with Louis B. Mayer, Irving Thalberg and J. Robert Rubin (doing business as Louis B. Mayer Pictures) for a period of five years from April 7th, 1932, on the same terms and conditions generally set forth in the agreement now in effect.

.....

There being no further business the meeting was adjourned.

2651

LEOPOLD FRIEDMAN  
Secretary.



2652

# Defendants' Exhibit C-24.

2653

## SHORTS

Prod. No.	Title	Date Released	No. of Reels	Fiscal Year Ending 1931	Fiscal Year Ending 1932	% of 1932 to Total Cost	Total	
556	Trader Airdale Dog Comedies	11-28-31	2	\$36,509.73	5,058.88	12.2	\$41,568.61	
567	Olympic Events Sport	3-5-32	1	29,262.25	6,733.58	18.7	35,995.83	
583	Wrestling Short	2-18-33	1	7,413.51	3,442.85	29.2	11,807.58	
585	Billiard Short	1-7-33	1	9,384.61	4,222.41	31.0	13,613.50	
588	Puppy Love	Rejected		11.26	1,824.63	99.4	1,835.89	
589	Pearls and Devilfish	9-19-31	1	19,841.33	3,025.61	13.2	22,866.94	2654
590	Sharks and Swordfish	10-24-31	1	6,616.39	1,815.31	21.5	8,431.70	
591	Trout Fishing	4-2-32	1	202.88	6,144.15	96.8	6,347.03	
592	Aquarium Short	4-23-32	1		7,788.05	100.00	7,788.05	
593	Bull Fight Short	10-15-32	1		17,229.61	99.9	17,239.85	
594	Sea Elephants	11-28-31	1		3,294.93	100.0	3,294.93	
597	Motor Boating	9-17-32	1		11,460.47	100.0	11,460.47	
607	Trapeze Short	10-10-32	1		9,946.00	99.9	9,951.00	
613	Winter Sports	8-20-32	1		5,781.56	99.2	5,827.46	
617	Auto Racing	3-11-33	1		10,293.50	89.1	11,556.09	
619	South Sea Shorts	8-13-33	1		1,531.43	100.0	1,531.43	
621	Perils of the Desert	9-10-32	1		2,559.28	69.6	3,679.03	2655
622	Duck Hunting	11-5-32	1		1,858.61	63.4	2,929.31	
630	Motorcycle Racing	4-1-33	1		3,461.08	40.3	8,586.13	
644	Pigskin College	10-22-32	1		2,378.94	10.1	23,451.20	
642	Over the Counter	11-15-32	2		350.98	.9	43,761.55	
Total				\$109,241.96	110,231.86	37.6	\$293,523.58	

## Defendants' Exhibit C-25.

## STATEMENT SHOWING PRODUCTION COSTS ACCRUED ON FEATURES DURING FISCAL YEAR 1932

## AND PERCENTAGE OF COMPLETED COSTS AND SHOOTING TIME:

Title	Cost at Aug. 26, 1931		Increase for Fiscal Year End. 8-24-32		Total		FINAL COST		% COMPLETED IN 1932	
	Days	Amount	Days	Hrs.	Amount	Days	Hrs.	Complete	Rejected	% FEATURES By Days By Cost
Bugle Sounds					6,589.92				6,589.92	
Broadway to Hollywood					50,044.51	27		270,524.72		18.5
Hell Divers	36	594,141.83	21		220,796.16	58		814,932.99		36.2 27.1
Susan Lennox	33	458,194.22	16		114,444.43	49		572,638.65		32.6 20.
Sidewalks of New York	33	271,247.62			7,912.35	33		279,159.97		0. 2.8
Sin of Madeline Claudet	34	308,323.87	8		54,684.57	42		363,014.17		19. 15.1
Emma		54,571.59	35		290,093.08	35		344,664.67		100. 84.2
Boarding School	4	108,786.67			38,381.75				70,404.92	
Get Rich Quick Wallingford	33	326,627.55		15 1/2	54,613.94	33	15 1/2	381,241.99		6. 14.3
West of Broadway	25	489,104.10	7		50,019.50	32		539,123.60		22. 9.3
Mata Hari		63,560.15	43		488,914.85	43		552,475.00		100. 88.5
Flying High	15	231,405.92	25		291,755.89	40		527,936.81		62.5 55.3
Possessed		117,749.09	26		220,837.66	26		370,862.08		100. 59.5
A Family Affair		35,579.32			8,864.03				26,715.29	
Cuban Love Song	15	293,042.07	28		243,129.87	43		536,221.86		65.1 45.3
The Champ	26	188,724.12	26		160,674.66	32		349,537.45		81. 46.
Private Lives		95,650.93	40		395,266.86	40		490,917.79		100. 80.5
Tarzan		4,652.63	60		648,022.73	60		652,675.36		100. 99.3
Arsene Lupin		1,269.45	28		415,989.35	28		421,474.53		100. 98.7
Freaks		50,137.78	36		260,467.92	36		310,607.37		100. 83.9
Lovers Courageous			39		333,268.32	39		333,370.71		100. 100.
City Sentinel			25	56	217,627.27	25	56	217,923.76		100. 99.9
Polly of the Circus			33	9	430,781.90	33	9	430,781.90		100. 100.
Cardboard Lover			22		256,487.07	22		256,477.07		100. 100.
Grand Hotel			49		695,067.87	49		695,341.20		100. 100.
Wet Parade			34		357,960.67	34		357,906.26		100. 100.
Are You Listening			29		243,653.31	29		243,654.16		100. 100.
Huddle			56		509,512.88	56		509,520.88		100. 100.
Strange Interlude			40		640,579.88	40		641,883.19		100. 99.8
Truth Game		9,115.05	30		285,619.54	30		294,774.37		100. 96.9
When a Fellow Needs a Friend			29	45	325,934.81	29	45	326,112.03		100. 99.9
Letty Lynton			33		316,139.48	33		316,192.23		100. 100.
Prosperity			38		336,387.63	89		625,616.21		42.7 53.8
Night Court		3.42	20		182,921.43	20		183,341.54		100. 99.8
As You Desire Me			42		460,723.24	42		460,733.00		100. 100.
After All			28		186,124.00	28		186,125.34		100. 100.
Redheaded Woman		641.67	30		394,083.47	30		394,736.52		100. 99.8
Eskimo					286,182.01	40		931,667.58		30.7
Washington Masquerade			38		349,440.93	38		349,632.78		100. 99.9
Downstairs			30		470,988.29	30		471,071.82		100. 100.
Sailing Thru			61		784,915.24	68		834,859.72		89. 94.
Blondie of the Follies			35	93	599,272.02	35	93	602,680.28		100. 99.4
Speak Easily			39		415,655.51	39		416,993.43		100. 99.7
					272,510.40					100. 97.4



462	Broadway to Hollywood				50,044.51	27	270,524.72		18.5
553	Hall Divers	36	594,141.83	21	220,796.16	58	812,932.99	36.2	27.1
561	Susan Lennox	33	458,194.22	16	114,444.43	49	572,638.65	32.6	20
569	Sidewalks of New York	33	271,247.62		7,912.35	33	279,159.97	0	2.8
570	Sin of Madeline Claudet	34	308,323.87	8	54,684.57	42	363,014.17	19	15.1
574	Emma		54,571.59	35	290,093.08	35	344,664.67	100	84.2
576	Boarding School	4	108,786.67		38,381.75			70,404.92	
577	Get Rich Quick Wallingford	33	326,627.55	15 1/2	54,613.94	33	381,241.99	6	14.3
578	West of Broadway	25	489,104.10	7	50,019.50	32	539,123.60	22	9.3
579	Mata Hari		63,560.15	43	488,914.85	43	352,475.00	100	88.5
580	Flying High	15	231,405.92	25	291,755.89	40	527,936.81	62.5	55.3
581	Possessed		117,749.09	26	220,837.66	26	370,862.08	100	59.5
582	A Family Affair		25,579.32		8,864.03			26,715.29	
584	Cuban Love Song	15	293,042.07	28	243,129.87	43	536,221.86	65.1	45.3
586	The Champ	6	188,724.12	26	160,674.66	32	349,537.45	81	46
587	Private Lives		95,650.93	40	395,266.86	40	490,917.79	100	80.5
595	Tarzan		4,652.63	60	648,022.73	60	652,675.36	100	99.3
596	Arsene Lupin		1,269.45	28	415,989.35	28	421,474.53	100	98.7
598	Freaks		50,137.78	36	260,467.92	36	310,607.37	100	83.9
599	Lovers Courageous			39	333,268.32	39	333,370.71	100	100
600	City Sentinel			25	217,627.27	25	217,923.76	100	99.9
601	Polly of the Circus			33	430,781.90	33	430,781.90	100	100
602	Cardboard Lover			22	256,487.07	22	256,477.07	100	100
603	Grand Hotel			49	695,067.87	49	695,341.20	100	100
604	Wet Parade			34	357,960.67	34	357,966.26	100	100
605	Are You Listening			29	243,653.31	29	243,654.16	100	100
606	Huddle			56	509,512.88	56	509,520.88	100	100
608	Strange Interlude			40	640,579.88	40	641,883.19	100	99.8
609	Truth Game		9,115.05	30	285,619.54	30	294,774.37	100	96.9
610	When a Fellow Needs a Friend			29	325,934.81	29	326,112.03	100	99.9
611	Letty Lynton			33	316,139.48	33	316,192.23	100	100
612	Prosperity			38	336,387.63	89	625,616.21	42.7	53.8
614	Night Court		3.42	20	182,921.43	20	183,341.54	100	99.8
615	As You Desire Me			42	460,723.24	42	460,733.00	100	100
616	After All			28	186,124.00	28	186,125.34	100	100
618	Redheaded Woman		641.67	30	394,083.47	30	394,736.52	100	99.8
620	Eskimo			40	286,182.01	40	931,667.58		30.7
623	Washington Masquerade			38	349,440.93	38	349,652.78	100	99.9
624	Downstairs			30	470,988.29	30	471,071.82	100	100
625	Smiling Thru			61	784,915.24	68	834,859.72	89	94
626	Blondie of the Follies			35	599,272.02	35	602,680.28	100	99.4
627	Speak Easily			39	415,655.51	39	416,993.43	100	99.7
628	Skyscraper Souls		1,926.94	28	362,976.38	28	372,510.40	100	97.4
629	Unashamed			24	163,227.01	24	163,246.33	100	100
631	Flesh				65,618.57	42	477,238.11		13.6
632	Father and Son			30	231,274.43	30	232,761.45	100	99.4
633	Rasputin			31	405,952.35	104	1,019,404.39	30	39.8

(Figures in italics were red in original.)

## Defendants' Exhibit C-25 (continued).

STATEMENT SHOWING PRODUCTION COSTS ACCRUED ON FEATURES DURING FISCAL YEAR 1932  
AND PERCENTAGE OF COMPLETED COSTS AND SHOOTING TIME

(Cont.)

Prod. No.	Title	Cost at Aug. 26, 1931		Increase for Fiscal Year End. 8-24-32		Total		FINAL COST		% COMPLETED IN 1932	
		Days	Amount	Days	Hrs.	Days	Hrs.	Complete	Rejected	By Days	By Cost
633	Red Dust		8,347.73	5		44		405,219.79		11.5	38.4
635	Hell Below		25,901.06			70		889,842.86			15.7
636	Kongo		"	20		27	1	156,998.25		76.3	66.9
637	Fast Life					45		428,891.17			9.2
638	Faithless			15		28		203,420.45		53.5	54.6
639	Payment Deferred			18		32		191,970.39		56.2	51.4
640	Fu Manchu			10		55		327,627.26		18.5	32.4
647	White Sister					58		619,779.80			
<hr/>											
Total Features in Process During Year		234	3,738,704.78	1,360	299½	14,991	311½	23,348,395.64	103,710.13	3702.1	3640.7
Cost of Foreign Versions								734,585.45			
Cost of Suspense Productions			78,153.72					308,796.96			
Cost to Pict. Comp. in Prior Years			731,198.08					59,267.71			
Cost of SHORTS								110,231.86			
TOTAL PRODUCTION COSTS FISCAL YEAR 1932								16,204,197.54			

2661

2660

2659

## Defendants' Exhibit C-27.

662

FEATURE PICTURES RELEASED DURING FISCAL  
YEAR 1931-1932

663

664

Title	Started	Finished	Total
Squaw Man (544)	2-9-31	3-26-31	\$721,986.65
Phantom of Paris (504)	2-14-31	3-12-31	480,515.74
Sidewalks of New York (569)	5-13-31	6-22-31	279,159.97
New Advent, Wallingford (577)	7-13-31	8-21-31	381,241.99
Susan Lennox (561)	5-26-31	7-6-31	572,638.65
Nin of Madelon Claudet (570)	5-29-31	6-25-31	363,014.17
Cuban Love Song (584)	8-10-31	9-24-31	336,221.86
Guardsmen (575)	6-24-31	7-23-31	312,654.81
Flying High (580)	8-10-31	9-19-31	527,936.81
Possessed (581)	9-2-31	10-1-31	370,862.08
West of Broadway (578)	7-6-31	8-1-31	539,123.60
The Champ (586)	8-19-31	9-22-31	349,537.45
Private Lives (587)	9-8-31	10-23-31	490,917.79
Mata Hari (579)	10-1-31	11-16-31	552,475.00
Hell Divers (553)	6-25-31	8-6-31	814,932.99
Lovers Courageous (599)	11-3-31	12-13-31	333,370.71
Enigma (574)	10-19-31	11-20-31	344,664.67
Passionate Plumber (602)	12-1-31	12-19-31	256,477.07
Beast of the City (600)	11-4-31	12-2-31	217,923.76
Freaks (598)	11-9-31	12-16-31	310,607.37
Polly of the Circus (601)	12-2-31	1-9-32	430,781.90
Arsene Lupin (596)	11-17-31	12-16-31	421,474.53
Are You Listening (605)	1-6-32	1-27-32	243,654.16
Tarzan the Ape Man (595)	10-31-31	12-13-31	652,675.36
But the Flesh Is Weak (609)	1-28-32	2-26-32	294,774.37
Wet Parade (604)	1-18-32	2-15-32	357,966.26
Night Court (614)	2-22-32	3-11-32	183,341.54
When a Feller Needs a Friend (610)	2-15-32	3-19-32	326,112.03
Letty Lynton (611)	2-24-32	3-28-32	316,192.23
Huddle (606)	2-11-32	4-8-32	509,520.88
As You Desire Me (615)	3-4-32	4-12-32	460,733.00
New Morals for Old (616)	3-3-32	3-28-32	186,125.54
Red Headed Woman (618)	4-28-32	5-27-32	394,736.52
Unashamed (629)	5-17-32	6-11-32	163,246.33
Washington Masquerade (623)	5-4-32	6-16-32	349,652.78
Skyscraper Souls (628)	5-16-32	6-20-32	372,510.40
Downstairs (624)	5-28-32	6-27-32	471,071.82
Speak Easily (627)	5-9-32	6-17-32	416,993.43
Blondie of the Follies (626)	5-28-32	7-8-32	602,680.28
Divorce in the Family (632)	6-27-32	7-30-32	232,761.45
Grand Hotel (603)	12-30-31	2-19-32	695,341.20

# Defendants' Exhibit C-29.

## Schedule A-1

### STUDIO OVERHEAD

Classification	Dr.	Cr.
Salaries—Executive Department	\$1,047,599.43	\$
Expenses—Executive Department	16,482.79	
Salaries—Accounting Department	100,421.33	
Expenses—Accounting Department	21,300.88	
Salaries—Production Department	72,346.20	
Expenses—Production Office	2,368.15	
Salaries—Casting Office	41,600.32	
Expenses—Casting Office	35,210.19	
Salaries—Projection Department	2,225.51	
Expenses—Projection Department	31.42	
Salaries and Expenses—Business Office	48,847.61	
Drayage and Auto Hire	1,748.47	
Salaries—Plant Engineering & Planning	50,660.93	
Expense of Personnel Department	220.63	
Salaries, Maintenance	123,602.31	
Maintenance—Repair of Buildings	32,553.44	
Repair and Maintenance of Facilities	151,527.64	
Legal & Other Expenses re Patent Rights	2,060.52	
Legal Salaries and Expense	30,573.43	
Rental of Studio and Facilities	334,464.61	
Insurance—General	33,635.91	
Insurance—Miscellaneous Compensation	54,051.30	
Taxes—City, County and State	72,461.51	
Railway Transportation	2,054.97	
Mailing Expense	11,058.40	
Printing and Stationery	14,745.02	
Stock Library Expense	16,298.66	
Fan Mail Expense	2,514.53	
Losses not covered by Insurance	496.65	
Entertainment	8,440.23	
Donations	6,928.99	
New York Office Expense in Connection with Production	149,520.31	
Stamp Tax —	432.72	
Salaries of Directors Unassigned	27,715.49	



## Defendants' Exhibit C-29 (continued)

2668	Classification	Dr.	Cr.
	Miscellaneous Unclassified Expense	19,357.06	
	Rejected Continuity Charges and Songs	63,996.57	
	Accumulation on Rejected Pictures	151,686.80	
	Film Rentals for Studio Showing	3.05	
	Heating and Ventilation	6,357.82	
	Button Deposit		18.00
	Salvage Yard		9.41
	Dues	24,765.60	
	Uncollectible Accounts Receivable	3,970.81	
	Home Office Unclassified	46,081.93	
	Freight & Handling		7,809.33
	Telephone Expense	86,677.60	
	Telegraph Expense	8,651.48	
	Experimental Work—Trick Cameras	24,678.10	
2669	Executive Dining Room Expense	8,485.20	
	Flowers for Executive Office	702.61	
	Private Dining Room in Commissary	1,501.43	
	Income from Use of Flowers		4,011.45
	Adjustment of Overhead for year ended 8/27/31		9,910.89
	Totals General Overhead	\$2,963,125.56 21,759.08	\$21,759.08
	Less absorbed into Pictures	\$2,941,366.48 2,153,868.00	
	Total Unabsorbed General Overhead	\$787,498.48	



*Defendants' Exhibit C-29* (continued).

Classification	Dr.	Cr.
Brought Forward	\$787,498.48	
Department Overhead (Balance)		
Unassigned Salaries—		
Domestic Stock Co.	\$813,240.63	
Less: Percentage Charged to Productions	128,855.26	
	<u>\$684,385.37</u>	
Less: Profit from Stock Talent Rentals	95,170.98	
	<u>\$589,214.39</u>	
Less: Unassigned Salaries	\$304,429.80	
Less: Directors	12,000.00	
Less: Foreign	1,240.88	298,025.47
	<u>2,170.83</u>	
Restaurant		
Overabsorbed Balance—Sound Overhead		113,249.85
Wardrobe Department		3,593.52
Auto & Trucking		14,287.16
Laboratory		861,830.24
Still Room		20,573.48
Construction Department	5,211.73	
Publicity	101.53	
Scenario Dept.		30,532.41
Editorial Dept.	11,841.67	
Property Dept.	7,708.62	
Music Dept.	21,330.20	
Camera Dept.	9,781.52	
Precision Machine Shop	141.03	
Portrait Dept.	63.18	
Mechanical Dept.	9,379.54	
Art Dept.	15,204.64	
Miniature and Trick Dept.	12,280.69	
Newcombe Department	4,307.77	
Print Shop		439.75
Salvage Yard		162.52
Advertising Dept.	2,013.84	

*Defendants' Exhibit C-29 (continued).*

2674	Classification	Dr.	Cr.
	Props—Rental		1,552.80
	Electrical Equipment Rentals		93.76
	Other Equipment Rentals		600.98
	Profit from Outside Producers		51,438.35
	Rental of Standing Sets		10,245.00
	Foreign Dept. Overhead (Unabsorbed)	17,173.36	
		<u>\$1,201,534.10</u>	<u>\$1,108,608.82</u>
		1,108,608.82	
		<u>\$92,925.28</u>	
	Studio General Overhead on Schedule "A" annexed		\$ 92,925.28
	Addition to Reserves for Continuity		500,000.00
2675	Income from Royalties from Music Publishers on Songs used in Production		11,520.35
	<i>Salaries Paid by New York:</i>		
	Thalberg	\$156,000.00	
	Other Prod. Executives	26,000.00	182,000.00
	Compensation Paid to Louis B. Mayer Pictures		922,141.09
	Unabsorbed Studio Depreciation		179,704.16
	Interest Paid		1,559,559.79
	Total Unabsorbed Overhead		<u><u>\$3,424,809.97</u></u>

(Figures, in italics appeared red in original.)

# **Defendants' Exhibit C-30.**

26770

## **METHOD OF COMPUTING PERCENTAGE OF OVERHEAD CHARGEABLE TO LETTY LYNTON ON TIME BASIS**

Number of Production Days all Pictures during Fiscal Year 1932—

	Days	Hours	Rate	Amount
(1) Feature Pictures . . . . .	1327		1559.00	2,068,793.00
(2) Feature—Cosmopolitan . . . . .	33		1250.00	41,250.00
(3) " (Retakes) " . . . . .		275	125.00	34,375.00
(4) " " " . . . . .		24½	100.00	2,450.00
(5) 2 Shorts—Est. at 2 days each . . . . .	4		3500.00	7,000.00
	<u>1364</u>	<u>299½</u>		<u>2,153,868.00</u>

26770

Miscellaneous Items 2 to 5 converted to Days on basis of 8 hour day:

Total Days as above . . . . . 1364  
 299½ hrs. ÷ 8 = . . . . . 37 plus

Total Production Days on which  
 overhead was charged . . . . . 1401  
 Letty Lynton overhead days . . . . . 33  
 Letty Lynton's percent to Total . . . . . .0235

Schedule No. 1

26770

*Defendants' Exhibit C-30 (continued).*

**METHOD OF COMPUTING  
PERCENTAGE OF OVERHEAD CHARGEABLE TO  
LETTY LYNTON**

Number of Production Days all Pictures during Fiscal Year 1932—

	Days	Hours	Rate	Amount
(1) Feature Pictures	1327		1559.00	2,068,793.00
(2) Feature—Cosmopolitan	33		1250.00	41,250.00
(3) " (Retakes) "		275	125.00	34,375.00
(4) " " "		241½	100.00	2,450.00
(5) 2 Shorts—Est. at 2 days each	4		3500.00	7,000.00
	<u>1364</u>	<u>2991½</u>		<u>2,153,868.00</u>

Miscellaneous Items 2 to 5 converted to Days on Basis of amount charged:

Total Overhead charged		2,153,868.00
Less Feature—	1327 days (1)	2,068,793.00

Misc. Items 2 to 5 (Incl.)

85,075.00

Regular Camera Day Overhead  
Rate

1559.00

$85,075.00 \div 1559.00 =$

54 plus

Number of Feature Days as  
above

1327

Total Days

1381

Letty Lynton days

33

Letty Lynton percent to Total

.0239

Schedule No. 2.

*Defendants' Exhibit C-30 (continued).*

**METHOD OF COMPUTING  
PERCENTAGE OF OVERHEAD CHARGEABLE TO LETTY  
LYNTON ON BASIS OF DIRECT PRODUCTION  
COSTS OF FEATURE PICTURES**

Total Cost of Feature Pictures during fiscal year 1932—  
Per Exhibit C-25 in Studio Hearing 14,991,315.56  
Plus items included in Complainant's Memorandum,  
Page 12, as follows:

576—Boarding School	38,381.75
582—A Family Affair	8,864.03
	<hr/>
	47,245.78

Plus charges to Letty Lynton in other fiscal years	52.75	47,298.53
	<hr/>	<hr/>

15,038,614.09

Less: All Studio Overhead deducted on  
same basis as set forth in Com-  
plainant's Memorandum, pages 7  
to 11 inclusive, except total  
elimination of publicity charges  
explained below:

3,678,758.93

(See Schedule No. 1 attached)

11,359,855.16

Letty Lynton costs as set up by Com-  
plainant's Memorandum, page 11:

238,649.30

Less: Publicity Charges explained below:

3,179.64

(See Schedule No. 2 attached)

235,469.66

Letty Lynton's percentage of direct cost to total .02073

\* Complainant's Memorandum objects to Publicity Charges, but leaves in picture  
Letty Lynton a charge based on .018% of total Publicity Charges for year. We claim  
basis of .018% is incorrect and to arrive at proper basis eliminate all Publicity  
charges to arrive at percentage of overhead per Complainant's own basis.



## Defendants' Exhibit C-30. (continued).

**METHOD OF COMPUTING  
PERCENTAGE OF OVERHEAD CHARGEABLE TO LETTY  
LYNTON ON BASIS SET FORTH IN COM-  
PLAINANT'S MEMORANDUM**

See Page 12 of Complainant's Memorandum 16,204,197.3

Is set up in C-25 as follows:

Total Features in Process during year	14,991,315.56	
Cost of Foreign Versions	734,585.45	
Cost of Suspense Productions	308,796.96	
Costs to Pictures Comp. in Prior Year	59,267.71	
Cost of Shorts	110,231.86	
		16,204,197.3

Per Complainant's Memorandum

Add #576—Boarding School	38,381.75	
582—A Family Affair	8,864.03	47,245.78
		16,251,443.08

Less: Studio Overhead Absorbed into Pictures (C-29)		2,153,868.00
--	--	--------------

Balance Constituting Labor and Material	14,097,575.08
Letty Lynton—Labor and Material (Ex. 18-D-5)	262,682.00

Complainant's Ratio .018

As shown above Complainant included in his total costs of all pictures the cost of all foreign versions, but did not include in Letty Lynton the cost of Letty Lynton Foreign Versions. To correctly compute the ratio we should add as follows:

Cost of Letty Lynton Labor & Material (Ex. 18-D-5)	262,682.00
--	------------

Letty Lynton Foreign Version Costs

included in the item of \$734,585.45:

General Version	1,012.76	
German Version	12,600.50	
French Version	13,139.33	
Italian Version	10,741.10	37,493.69
		300,176.29

Letty Lynton Cost including Foreign Versions	300,176.29
--	------------

Correct Ratio .0213

**Defendants' Exhibit C-31.**

2689

**METRO-GOLDWYN-MAYER CORPORATION**

Studios  
**CULVER CITY**  
California.

September 17, 1937.

**AIR MAIL**

Mr. S. D. Cohen,  
Loew's Incorporated,  
1540 Broadway,  
New York, N. Y.

2690

Dear Sam:

I am very sorry that I have been so long getting this information to you, but assure you it has not been because of neglect.

I hope that the four methods of computing the percentage of overhead charges to LETTY LYNTON which are attached will be of some material help to you. Mr. Cochran, Walter Hilborn and myself have spent considerable time working these out and checking them and I think we have not overlooked any reasonable method.

Your attention is especially called to No. 4 which should give you some satisfaction because it takes the complainant's own proposed method and proves that he omitted an important factor in his computation.

2691

The four methods attached (and I have made them separate so that you could use any one without exhibiting the others) are as follows:

No. 1—Computing on a time basis, converting to a normal camera day the miscellaneous hourly charges on a basis of an eight hour day, we arrive at a ratio of .0235.

No. 2—This is the same idea of computation on a time basis, except that instead of converting the miscellaneous

*Defendants' Exhibit C-31 (continued).*

2692 hours on an eight hour day we have divided the charges by the standard camera day charge at \$1559 per day. This develops a ratio of .0239.

No. 3—This method is based on complainant's proposal to eliminate all overheads, both general and departmental, from LETTY LYNTON and also all similar overheads from all feature productions produced during the year. Detailed schedules are attached so that you can see what overheads we have eliminated. This produces a ratio of .02073.

2693 No. 4—This is the complainant's own method of arriving at the ratio of .018, showing that he has included the foreign versions as a part of the total cost of pictures made at the studio during the year, but in arriving at his ratio he did not include in the cost of LETTY LYNTON the LETTY LYNTON foreign versions. Including these foreign versions in LETTY LYNTON the correct ratio is .0213.

In a separate letter I have corrected my testimony as to the synchronized and shot versions.

I hope that this information will reach you in time to serve your purpose.

Yours truly,

METRO-GOLDWYN-MAYER CORPORATION

By W. K. CRAIG,  
Comptroller.

2694 WKC:B  
Enc.

# **Defendants' Exhibit C-32.**

2695

## **CHARGE OF UNASSIGNED TIME AS TO STARS**

Amount	Star	Picture
\$ 38,333.33	Marie Dressler	Emma
6,416.67	William Haines	Wallingford
53,000.00	Greta Garbo	Mata Hari
36,000.00	Joan Crawford	Possessed
1,250.00	Robert Montgomery	Lovers Courageous
64,500.00	Buster Keaton	Cardboard Lover (released as Passionate Plumber)
100,750.00 { 36,000.00	Joan Crawford	
18,750.00	Wallace Beery	Grand Hotel
46,000.00	Greta Garbo	
12,500.00	Robert Montgomery	Truth Game (released as The Flesh Is Weak)
3,033.33	Jackie Cooper	When A Fellow Needs A Friend
33,916.67	Marie Dressler	Prosperity
22,000.00	Greta Garbo	As You Desire Me
16,666.67	Robert Montgomery	Blonde of the Follies
100,000.00	Buster Keaton	Speak Easily
\$4,500.00 { 2,000.00	Joan Crawford	
2,500.00	Robert Montgomery	Letty Lynton

2696

2697

# Defendant, Loew's Inc., Exhibit L-1.

## CORPORATIONS OPERATING THEATRES WHICH PLAY "LETTY LYNTON"—COMMON STOCK OF WHICH WAS WHOLLY OWNED BY LOEW'S INC. IN 1932.

Percentage of Ownership	Company	Theatre
2698 100	Astoria Theatre Corporation	Astoria
100	Astoria Theatre Corporation	Century
100	Notamo Amusement Company	Avenue B
100	Bedford Amusement Corporation	Bedford
100	Loew's Boulevard Corporation	Boulevard
100	Brevoort Holding Co. Inc.	Brevoort
100	Mascot Amusement Company	Circle
100	Loew's Theatre Corporation	Commodore
100	Coney Island Theatre Inc.	Coney Island
100	The Delancey Amusement Company	Delancey
100	Loew's 86th St. Corporation	86th St.
100	Loew's 86th St. Corporation	Orpheum
100	New Broad Company	83rd St.
100	New Broad Company	State (Newark)
100	Crotona-Elsmere Corporation	Elsmere
2699 100	Fairmont Theatre Corporation	Fairmount
100	Cedric Amusement Corporation	42nd St.
100	Eton Amusement Corporation	46th St.
100	Hillside Theatre Corporation	Hillside
100	Abingdon Amusement Corporation	Kameo
100	Loew's Lexington Inc.	Lexington
100	Humanova Producing Company	Lincoln Square
100	Nevins Amusement Corporation	Melba
100	Putnam Theatrical Corporation	Metropolitan
100	International Vaudeville Company	National
100	116th St. Operating Corporation	116th St.
100	167th St. Amusement Corporation	167th St.
100	Palace-Brooklyn Corporation	Palace
100	Marcus Loew Inc.	Seventh Ave.
100	Marcus Loew Realty Corporation	State (N. Y.)
2700 100	Marcus Loew Realty Corporation	New York and Roof
100	Steinway-38th St. Corporation	Triboro
100	Woodside Operating Corporation	Woodside
100	Main St. Akron Amusement Com- pany	Akron, Loew's
100	Loew's Atlanta Theatre Company	Atlanta, Grand
100	Loew's Dayton Theatre Company	Dayton, Loew's
100	Loew's Harrisburg Corporation	Harrisburg, Regent
100	Loew's Houston Company	Houston, State
100	Loew's Indiana Theatres	Indianapolis, Palace
100	Loew's Theatre & Realty Corp'n.	Valencia
100	Loew's Theatre & Realty Corp'n.	Kings
100	Loew's Theatre & Realty Corp'n.	Pitkin
100	Loew's Theatre & Realty Corp'n.	Kansas City, Midland
100	Loew's N & K Corporation	Nashville, Vendome
100	Reading Theatre Corporation	Reading, Colonial



*Defendant, Loew's Inc., Exhibit L-1 (continued).*

**CORPORATIONS OPERATING THEATRES WHICH PLAYED "LETTY LYNTON" THE COMMON STOCK OF WHICH WAS PARTLY OWNED BY LOEW'S, INC. in 1932.** 270

Percentage of Ownership	Company	Theatre	
50	Diamond Amusement Corporation	Alpine	
50	Midas Amusement Company	Burland	
50	Walton-Burnside Amusement Co.	Burnside	
53.89	Gates Theatre Corporation	Gates	
66.33	Dyckwood Amusement Corporation	Inwood	
50	New Rochelle Consolidated Corp'n	New Rochelle (Main St.)	
50	Sutter Amusement Corporation	Premier	
50	Chateau Amusement Corporation	Rio	
50	Evergreen Amusement Corporation	Spooner	
56.1	The Marlow Amusement Corporation	Victoria	270
50	Hemlock Theatre Corporation	Victory	
50	Warwick Amusement Corporation	Warwick	
66.33	Yonkers Operating Corporation	Yonkers	
50	Loew's Boston Theatres Company	Boston, Orpheum	
86.71	*Loew's Ohio Theatres, Inc.	Cleveland, Allen	
86.71	*Loew's Ohio Theatres, Inc.	Cleveland, Granada	
86.71	*Loew's Ohio Theatres, Inc.	Cleveland, Mall	
86.71	*Loew's Ohio Theatres, Inc.	Cleveland, Park	
50	Evansville Operating Corporation	Evansville, Victory	
25	*Loew's London Theatres Ltd.	London (Can.) Loew's	
50	Toledo Operating Corporation	Toledo, Valentine	
58.75	*Marcus Loew's Theatres, Ltd.	Toronto (Can.) Yonge St.	
71.25	Anchor Theatrical Corporation	Washington, D. C. Palace	
50	Suburban Theatre Corporation	White Plains, State	270
10.7	Willard Amusement Corporation	Willard	
10.7	Willard Amusement Corporation	Mount Vernon	
10.44	Conwall Realty Corporation	Plaza	

\*The above holdings are of Common Stock and are junior to Preferred Stock outstanding in the following corporations, in hands of public:

Loew's Ohio Theatres Inc.	\$481,300
Loew's London Theatres, Ltd.	337,400
Marcus Loew's Theatres, Ltd.	653,900

	Percentage of Ownership	Company	Theatre
2698	100	Astoria Theatre Corporation	Astoria
	100	Astoria Theatre Corporation	Century
	100	Notamo Amusement Company	Avenue B
	100	Bedford Amusement Corporation	Bedford
	100	Loew's Boulevard Corporation	Boulevard
	100	Brevoort Holding Co. Inc.	Brevoort
	100	Mascot Amusement Company	Circle
	100	Lomash Theatre Corporation	Commodore
	100	Coney Island Theatre Inc.	Coney Island
	100	The Delancey Amusement Company	Delancey
	100	Loew's 86th St. Corporation	86th St.
	100	Loew's 86th St. Corporation	Orpheum
	100	New Broad Company	33rd St.
	100	New Broad Company	State (Newark)
	100	Crotona-Elsmere Corporation	Elsmere
2699	100	Fairmont Theatre Corporation	Fairmount
	100	Cedric Amusement Corporation	42nd St.
	100	Eton Amusement Corporation	46th St.
	100	Hillside Theatre Corporation	Hillside
	100	Abingdon Amusement Corporation	Kameo
	100	Loew's Lexington Inc.	Lexington
	100	Humanovo Producing Company	Lincoln Square
	100	Nevins Amusement Corporation	Melba
	100	Putnam Theatrical Corporation	Metropolitan
	100	International Vaudeville Company	National
	100	116th St. Operating Corporation	116th St.
	100	167th St. Amusement Corporation	167th St.
	100	Palace-Brooklyn Corporation	Palace
	100	Marcus Loew Inc.	Seventh Ave.
	100	Marcus Loew Realty Corporation	State (N. Y.)
2700	100	Marcus Loew Realty Corporation	New York and Roof
	100	Steinway-38th St. Corporation	Triboro
	100	Woodside Operating Corporation	Woodside
	100	Main St. Akron Amusement Com- pany	Akron, Loew's
	100	Loew's Atlanta Theatre Company	Atlanta, Grand
	100	Loew's Dayton Theatre Company	Dayton, Loew's
	100	Loew's Harrisburg Corporation	Harrisburg, Regent
	100	Loew's Houston Company	Houston, State
	100	Loew's Indiana Theatres	Indianapolis, Palace
	100	Loew's Theatre & Realty Corp'n.	Valencia
	100	Loew's Theatre & Realty Corp'n.	Kings
	100	Loew's Theatre & Realty Corp'n.	Pitkin
	100	Loew's Theatre & Realty Corp'n.	Kansas City, Midland
	100	Loew's N & K Corporation	Nashville, Vendome
	100	Reading Theatre Corporation	Reading, Colonial
	100	Clinton-Court Corporation	Rochester, Loew's
	100	Loew's St. Louis Realty & Amuse- ment Corp.	St. Louis, State
	100	Parkway Wilmington Corporation	Wilmington, Loew's

NOTE: NO STOCK OTHER THAN COMMON WAS OUTSTANDING.

*Defendant, Loew's Inc., Exhibit L-1 (continued).*

704

THEATRES WHICH PLAYED "LETTY LYNTON" WHICH WERE NOT AND ARE NOT NOW OWNED OR LEASED BY DEFENDANT LOEW'S INCORPORATED, OR ANY OTHER DEFENDANT, OR BY ANY AFFILIATE OR SUBSIDIARY OF LOEW'S INCORPORATED, OR OF ANY OF THE OTHER DEFENDANTS HEREIN, BUT WERE MERELY MANAGED BY MARCUS LOEW BOOKING AGENCY UNDER WRITTEN MANAGEMENT AGREEMENTS WITH THE OWNERS OF SAID THEATRES.

THEATRES

705

BROADWAY  
FREEMAN  
MT. VERNON  
PLAZA  
PROSPECT  
SHERIDAN  
WILLARD  
FOX, ATLANTA.

706



*Defendant, Loew's Inc., Exhibit L-1 (continued).*

**CORPORATIONS OPERATING THEATRES WHICH PLAYED "LETTY LYNTON" IN WHICH SAID CORPORATION, LOEW'S INC. HAVE AN INDIRECT STOCK INTEREST, IN WHOLE OR IN PART THROUGH ONE OR MORE INTERMEDIATE CORPORATIONS.**

Theatre	Operating Corporation	Intermediate Corporation Owning Stock of Operating Corporation	Owner of Stock of Intermediate Corporation	Owner of Stock of Second Intermediate Corporation
Bay Ridge	Ridge Bay Amusement Corporation	Diamond Amusement Corporation	Loew's Incorporated	50%
Canal	Ludlow Operating Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
Embassy, No. Bergen	North Bergen Amusement Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
Grand	Hamford Realty Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
Jersey	Jersey Boulevard Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
75th St.	Highbridge Realty Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
Oriental	Hawthorne Amusement Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
2nd St.	Wilthan Realty Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
Paradise	Concourse Realty Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
State, Providence	Providence Theatrical Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
State, Syracuse	Salina-Jefferson Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
Parkway, Baltimore	Century-Parkway Corporation	Penn-Federal Enterprises, Inc.	Loew's Incorporated	50%
Broad, Columbus	Loew-United Artists Columbus, Corp.	Penn-Federal Enterprises, Inc.	Loew's Incorporated	50%
State, Louisville	Louisville Operating Co. Inc.	Penn-Federal Enterprises, Inc.	Loew's Incorporated	50%
Alencia, Baltimore	Baltimore Consolidated Corporation	Century-Parkway Corporation	Penn-Federal Enterprises, Inc.	100%
Stanley, Baltimore	Baltimore Consolidated Corporation	Century-Parkway Corporation	Penn-Federal Enterprises, Inc.	100%
State, Boston	State Theatre Company	Loew's Boston Theatres Company	Loew's Incorporated	50%
State, Norfolk	Norfolk Consolidated Corporation	Loew's Virginia Enterprises, Inc.	Loew's Incorporated	100%
Loew's, Richmond	Richmond Consolidated Corporation	Richmond-Grade Corporation	Loew's Theatre & Realty Corp.	100%
Loew's, Canton, Ohio	Canton-Market Theatre Corporation	Loew's Theatre & Realty Corp.	Loew's Incorporated	100%
Penn, Pittsburgh	Penn-Federal Corporation	Penn-Federal Enterprises, Inc.	Loew's Incorporated	50%

\* The above holdings are of Common Stock and are junior to Preferred Stock outstanding in the following corporations, in hands of public:

Penn-Federal Corporation	\$930,000.
State Theatre Company	230,000.



**Defendant, Loew's Inc., Exhibit L-2.**

Payroll (Check No. 11372)		No. of Empl.	Trade Bills	Check No.	Films and Acts	Check No.	Weather
Bus. Manager	1	125.00	Newspapers	11373	379.98		
Asst. Bus. Manager	2	80.00	Other Advertising	"	8.92	11373	2000.00
			Lobby Stills Photos	"		"	
Treasurer			Display Cut Outs	"	46.85	"	40.00
Asst. Treasurer			Posters—Lith.—Cards	"	157.15	"	30.00
Cashiers	4	72.00	Trailers	"	24.47	"	30.00
Doormen	3	74.00	Loew's W'kly & Add.	"	112.50	"	
Special Officers	1	25.00	" " Postage	11372	35.05	"	
Ushers	26	400.96	Sign Shop	11373	30.00	"	25.00
Matron	1	12.00	Bill Posting	"	234.00	"	
Pages	4	48.00	Sub. Adv. Est.	"	625.00	"	2.75
Watchman	1	32.00	Maintenance—Repairs	"	21.00	"	2127.75
Painter	1	45.00	Booth Supplies	Aug.	6.87	"	
Superintendent			Cleaners Supplies	"		"	
Cleaners	11	155.00	Office Supplies	"	4.70	"	
Porters	4	87.00	Elec. Supplies	"		"	
Engineer	2	120.00	Cooling Plant Supplies	"		"	
Fireman			" " Gas	"		"	
Elevator Operator	1	14.00	" " Water	"		"	
Stage Manager	1	73.00	" Elec. Power	"		"	
Electrician	2	140.00	Carbons	"		"	
Asst. Electrician	1	62.00	Coal—Steam	"		"	
			Bal. Bill Apr. 112.91	"		"	
			Est. 200.00	"		"	
Property Man	2	132.00	Electric Light & Power	"	312.91	11365	807.50
Carpenter			Fire Alarm Service	"		11366	366.42
Clearers			Lamps	"	12.35	11367	380.00
Flymen			Music Scores	"	20.00	11368	712.50
Operators	5	357.00	Organ Maintenance	"	26.80	11369	997.50
Stage Doorman			Piano Rental	"		11370	171.79
Reel Boys	1	20.00	Telephone & Telegraph	"			
			Tickets	"			
Orchestra	17	1451.00	Ice, Cups and Filter Service	"			
			Booking Office	"	500.00		
Bill Poster	3	125.00	Detective Service	"			
Publicity Man			Express	"	2.00		
			Film Delivery	"	6.90		
Overtime			Production Exp.	"			
			Traveling Exp.	"			
Musicians	15	60.00	Relief Mgr.	"			
Operators	2	26.40	V. M. P. A. Dues	"			
Electrician	1	2.50	"Sound" Service Fee	"	40.00		
			Auto Hire	"	20.00		
			Miscel. Expense	11372	27.49		
Total		\$3738.86	Total		\$2654.04	Total	\$5563.46

Trade Bills		Check No.	Films and Acts	Check No.	Theatre METROPOLITAN City BROOKLYN
Newspapers	11373	379.98	FILMS		Week Ending MAY 20, 1932
Other Advertising	"	8.92	Metro-"Letty Lynton"	11373	2000.00
Lobby Stills Photos	"		Hearst Metrotonews #266 (4 days)	"	40.00
Display Cut Outs	"	46.85	" " " 267 (3 days)	"	30.00
Posters—Lith.—Cards	"	157.15	Columbia-Snapshots #8 (5 days)	"	30.00
Trailers	"	24.47			
Loew's W'kly & Add.	"	112.50			
" " Postage	11372	35.05			
Sign Shop	11373	30.00	Metro. Nickel Nurser (Add. Chg. 1 Day)	"	25.00
Bill Posting	"	234.00			
Sub. Adv. Est.	"	625.00	Adv. Tr. Sd. Tr. "Letty Lynton"	"	2.75
Maintenance—Repairs	"	24.90			
Booth Supplies	Aug.	6.87			
Cleaners Supplies	"				
Office Supplies	"	4.70			
Elec. Supplies	"				
Cooling Plant Supplies	"				
" Gas	"				
" Water	"				
" Elec. Power	"				
Carbons	"				
Coal—Steam	"				
Bal. Bill Apr. 112.91	"				
Est. 200.00	"				
Electric Light & Power	"	312.91			
Fire Alarm Service	"				
Lamps	"	12.35			
Music Scores	"	20.00			
Organ Maintenance	"	26.80			
Piano Rental	"				
Telephone & Telegraph	"				
Tickets	"				
Ice, Cups and Filter Service	"	500.00			
Booking Office	"				
Detective Service	"				
Express	"	2.00			
Film Delivery	"	6.00			
Production Exp.	"				
Traveling Exp.	"				
Relief Mgr.	"				
V. M. P. A. Dues	"	40.00			
"Sound" Service Fee	"	20.00			
Auto Hire	"				
Miscel. Expense	11372	27.49			
Total		\$2654.04			

# **Defendant, Loew's Inc., Exhibit L-3.**

279

## **PUTNAM THEATRICAL CORPORATION METROPOLITAN THEATRE FISCAL YEAR ENDED AUGUST 31, 1932 ANALYSIS OF OVERHEAD EXPENSE**

Insurance Premiums		\$ 5,495.81
Real Estate Taxes		37,984.75
Interest on Mortgage		39,937.17
Interest on Net Investment		31,786.00
Depreciation of Building and Equipment		42,563.00
Sundry Expense		839.80
		<hr/>
		\$158,606.53
Less		
Rent Income	\$11,473.42	
Sundry "	8.42	11,481.84
	<hr/>	<hr/>
Total for Year		\$147,124.69
		<hr/>
Per Week for 52 Weeks		\$ 2,829.32
		<hr/>

27)

27



# Defendant, Loew's Inc., Exhibit L-4.

Payroll (Check Nos. 1090, 1103)	No. of Empl.	Trade Bills	Check No.	Films and Acts	Check No.	
Bus. Manager	1	60.— Newspapers	1102	111.76		
Asst. Bus. Manager	1	45.— Other Advertising	"	94.—		
Treasurer		Lobby Stills Photos				
Asst. Treasurer		Display Cut Outs	"	23.31	Letty Lynton	MGM 1102 900.—
Cashiers	2	36.— Posters—Lith.—Cards	"	54.63	War Mamas	MGM " 52.50
Doormen	1	22.— Trailers	"	37.50	Down Memory Land	Col. " 18.—
Special Officers		Loew's Wkly & Add.	1102	88.—	News #	MGM " 30.—
Ushers	18	218.— " " Postage	1103	109.54	5/17-18	
Matron	1	12.— Sign Shop	1102	30.—	Trail of Vivienne Ware	Fox " 535.27
Pages	2	10.— Bill Posting			" " " Score	" " 10.—
Watchman	1	25.— Maintenance—Repairs	"	104.92	Bow & Arrow	Uni. " 10.—
Telephone	1	15.— Booth Supplies	"	2.70	News #83	Par " 12.50
Superintendent		Cleaners Supplies	"	10.60	" #84	" " 12.50
Cleaners	6	72.— Office Supplies			5/19-20	
Porters	5	92.— Elec. Supplies	"	13.03	Sky Bride	Par. " 330.—
Engineer		Cooling Plant Supplies			News #267	MGM " 20.—
Fireman		" " Gas			5/19-11 All Sealed Up	Par " 35.—
Carriageman	1	12.85 " " Water			5/12-13 Ireland, Melody Isle	MGM " 12.—
Stage Manager		" Elec. Power			5/12-13 Hollywood #13	Edu " 12.—
Electrician	1	65.— Carbons	"	55.64	5/7-9 Empire of Son	Pathe " 18.—
Rel. Electrician	1	11.50 Coal—Steam	"			
Property Man		Electric Light & Power	"	161.01		
Carpenter		Fire Alarm Service				
Clearers		Lamps				
Flymen		Music Scores				
Operators	6	357.— Organ Maintenance				
Stage Doorman		Piano Rental				
Reel Boys		Telephone & Telegraph				
Messenger	1	7.— Tickets				
Orchestra		Ice, Cups and Filter Service				
Bill Poster	1	40.— Booking Office	"	375.—		
Publicity Man		Detective Service	"			
Overtime		Express	"	1.—		
Electrician	1	5.— Film Delivery	"	8.50		
		Production Exp.				
		Traveling Exp.				
		Relief Mgr.				
		V. M. P. A. Dues				
		"Sound" Service Fee	"	40.—		
		Miscel. Expense	1103	40.86		
		Credits—Weil & Son		.98		
Total		\$1105.35	Total	\$1361.02	Total	\$2007.77

Refund Salary  
Perfume Sales  
Kotex Sales

Expense  
Pay Roll  
Trade Bills  
Films & Acts

Check No. 1104

These Lines to  
By Ma

## Defendant, Loew's Inc., Exhibit L-4.

Trade Bills	Check No.		Films and Acts
Newspapers	1102	111.76	FILMS
Other Advertising	"	94.—	5/14-15-16
Lobby Stills Photos			
Display Cut Outs	"	23.31	Letty Lynton
Posters—Lith.—Cards	"	54.63	War Mamas
Trailers	"	37.50	Down Memory Land
Loew's Wkly & Add.	1102	88.—	News #
" " Postage	1103	109.54	5/17-18
Sign Shop	1102	30.—	Trail of Vivienne Ware
Bill Posting			" " " Score
Maintenance—Repairs	"	104.92	Bow & Arrow
Booth Supplies	"	2.70	News #83
Cleaners Supplies	"	10.60	" #84
Office Supplies			5/19-20
Elec. Supplies	"	13.03	Sky Bride
Cooling Plant Supplies			News #267
" " Gas			5/19-11 All Sealed Up
" " Water			5/12-13 Ireland, Melody Isle
" Elec. Power			5/12-13 Hollywood #13
Carbons	"	55.64	5/7-9 Empire of Son
Coal—Steam	"		
Electric Light & Power	"	161.01	
Fire Alarm Service			
Lamps			ACTS
Music Scores			
Organ Maintenance			
Piano Rental			
Telephone & Telegraph			
Tickets			
Ice, Cups and Filter Service			
Booking Office	"	375.—	
Detective Service			
Express	"	1.—	
Film Delivery	"	8.50	
Production Exp.			
Traveling Exp.			
Relief Mgr.			
V. M. P. A. Dues			
"Sound" Service Fee	"	40.—	
Miscel. Expense	1103	40.86	
Credits—Weil & Son		.98	
Total		<u>\$1361.02</u>	



Check  
No.

Theatre LEXINGTON  
City • N. Y. City  
Week Ending May 20 1932

RECEIPTS

	Check No.		Weather	Date		Total For the Day
GM	1102	900.—				
GM	"	52.50	Warm	Sat. Mat. 5/14	846.25	
Col.	"	18.—	"	" Eve.	1701.90	2548.15
GM	"	30.—	"	Sun. Mat. 5/15	691.80	
	"		"	" Eve.	1850.60	2542.40
Fox	"	535.27	Hot	Mon. Mat. 5/16	364.80	
"	"	10.—	"	" Eve.	1138.40	1503.20
ni.	"	10.—	Warm	Tues. Mat. 5/17	341.45	
Par	"	12.50	Fair	" Eve.	1065.50	1406.95
"	"	12.50	Warm	Wed. Mat. 5/18	271.55	
	"		"	" Eve.	997.85	1269.40
ar.	"	330.—	Fair	Thur. Mat. 5/19	244.20	
GM	"	20.—	"	" Eve.	818.10	1062.30
Par	"	35.—	"	Fri. Mat. 5/20	208.10	
GM	"	12.—	"	" Eve.	727.15	935.25
Edu	"	12.—				
the	"	18.—				
						\$11267.65

2007.77

MISC. RECEIPTS

Refund Salary	5/16	3.—
Perfume Sales Comm	5/18	7.48
Kotex Sales	5/20	5.—

TOTAL INCOME \$11283.13

Expense		
Pay Roll	\$1105.35	
Trade Bills	\$1361.02	
Films & Acts	\$2007.77	4474.14

Check No. 1104 Balance \$6808.99

These Lines to be Left Blank  
By Manager

Overhead 3330.

Profit Loss 3478.99

REMARKS & OPPOSITION

Total \$2007.77

FREDERICK OWENS

Bus. Manager

(Stamp—Posted General Ledger.)

(Stamp—Audited No. 5—L.)

**Defendant, Loew's Inc., Exhibit L-5.**

2719

**LOEW'S LEXINGTON, INC.  
 LEXINGTON THEATRE  
 FISCAL YEAR ENDED AUGUST 31, 1932  
 ANALYSIS OF OVERHEAD EXPENSE**

Insurance Premiums	\$ 1,136.62
Real Estate Taxes	42,050.00
Interest on Mortgage	35,814.79
Interest on Net Investment	15,876.00
Depreciation of Building and Equipment	44,857.00
	<hr/>
	\$136,734.41
Less:	
Sundry Income	6.30
	<hr/>
Total for Year	\$136,728.11
	<hr/>
Per Week for 52 Weeks	\$ 2,629.39
	<hr/>

2720

2721

## Defendant, Loew's Inc., Exhibit L-6.

PROFIT OR LOSS OF THEATRES OPERATED BY CORPORATIONS WHOLLY OWNED BY LOEW'S INCORPORATED  
DURING PERIODS IN WHICH "LETTY LYNTON" (TOGETHER WITH OTHER ATTRACTIONS) WAS EXHIBITED

Play Date (1932)	Name of Theatre	Operated By	Payroll and Trade Bills for Entire Week	Overhead for Entire Week	Box Office Re- ceipts of period in which Letty Lynton (together with other attrac- tions) was Exhibited	Percentage of Weeks Receipts received during period in which Letty Lynton (together with other attrac- tions) was Ex- hibited	Payroll and Trade Bills Ap- plicable to period in which Letty Lynton (together with other attrac- tions) was Exhibited	Overhead Applicable to period in which Letty Lynton (together with other attrac- tions) was Exhibited	Cost of Feature Letty Lynton	Cost of Oth- er Attractions during period in which Let- ty Lynton was Exhibited
5/30-31	Astoria	Astoria Theatre Corp.	\$ 2,010.15	\$ 1,781.71	\$ 1,998.80	28.2	\$ 566.86	\$ 502.44	\$ 250.00	\$ 58.00
6/5-6	Century	Astoria Theatre Corp.	1,240.16	499.56	834.55	42.5	527.07	212.31	150.00	25.50
5/27-29	Avenue B	Natoma Amusement Company	1,563.58	663.79	1,539.60	57.4	897.49	381.02	325.00	115.25
5/28-30	Bedford	Bedford Amusement Corp.	1,654.15	1,558.66	2,906.25	73.7	1,219.11	1,148.73	450.00	123.00
5/28-31	Boulevard	Loew's Boulevard Corp.	2,286.32	673.59	4,716.10	80.1	1,831.34	539.55	800.00	902.28
6/4-6	Brevoort	Brevoort Holding Co., Inc.	1,403.76	642.04	1,152.25	44.7	627.48	286.99	300.00	100.50
5/21-22	Circle	Mascot Amusement Co.	1,500.63	622.87	1,018.50	38.2	573.24	237.94	200.00	67.00
5/20-22	Commodore	Lomasch Theatre Corp.	1,686.55	2,511.71	3,246.05	72.5	1,222.75	1,820.99	525.00	113.00
5/28-29	Coney Island	Coney Island Theatre Inc.	2,071.74	2,756.37	5,424.80	77.4	1,603.53	2,133.43	750.00	125.75
5/20-22	Delancey	The Delancey Amusement Co.	1,767.00	818.99	2,970.50	72.1	1,274.01	590.49	525.00	105.00
5/26-27	86th St.	Loew's 86th St. Corp.	1,543.46	531.53	1,202.45	28.9	446.06	153.61	350.00	50.00
5/21-24	Orpheum	Loew's 86th St. Corp.	3,792.61	1,550.94	6,188.80	76.6	2,905.14	1,188.02	700.00	1,368.57
5/14-17	83rd St.	New Broad Company	2,878.56	2,732.53	9,913.35	79.1	2,276.94	2,161.43	1,200.00	126.75
5/7-13	Newark	New Broad Company	4,557.81	3,457.23	17,423.95	100.	4,557.81	3,457.23	3,000.00	2,617.00
6/4-6	Elsmere	Crotona-Elsmere Corp.	1,428.35	971.03	897.85	43	614.19	417.54	225.00	78.25
5/28-31	Fairmount	Fairmount Theatre Corp.	1,950.89	1,641.98	5,510.75	84.8	1,654.35	1,392.40	900.00	161.75
5/21-22	42nd St.	Cedric Amusement Corp.	1,446.54	788.48	1,579.55	35.	506.29	275.97	350.00	72.00
5/28-31	46th St.	Eton Amusement Corp.	1,811.91	2,155.44	4,627.90	81.	1,467.65	1,745.91	800.00	159.00
5/28-30	Hillside	Hillside Theatre Corp.	1,473.74	1,823.13	2,779.35	68.9	1,015.41	1,256.14	450.00	95.75
5/28-30	Kameo	Abingdon Amusement Corp.	2,083.45	1,264.81	4,247.15	70.5	1,468.83	891.69	675.00	84.75
5/14-16	Lexington	Loew's Lexington Inc.	2,450.89	2,629.39	6,593.75	58.5	1,433.77	1,538.19	900.00	100.50
5/21-23	Lincoln Sq.	Humanovo Producing Co.	1,560.12	731.03	2,182.60	59.7	931.39	436.42	450.00	92.75
5/28-29	Meiba	Nevins Amusement Corp.	1,614.75	2,418.60	2,678.25	50.	807.38	1,209.30	400.00	48.00
5/14-20	Metropolitan	Putnam Theatrical Corp.	6,363.58	2,829.32	16,856.50	100.	6,363.58	2,829.32	2,000.00	3,563.40
5/28-31	National	International Vaudeville Co.	1,831.04	780.99	3,431.70	71.9	1,316.52	561.53	700.00	146.75
5/21-24	116th St.	116th St. Operating Corp.	1,570.73	836.41	2,237.80	73.	1,146.63	610.58	400.00	135.00
5/28-30	167th St.	167th St. Amusement Corp.	1,894.44	1,632.11	5,226.70	72.7	1,377.26	1,186.54	750.00	125.75
5/29-31	Palace	Palace-Brooklyn Corp.	1,408.64	992.72	1,686.25	56.3	793.06	558.90	225.00	80.75
5/21-23	Seventh Ave.	Marcus Loew Inc.	1,472.85	905.31	2,049.20	60.1	885.18	544.09	375.00	123.00
5/14-20	State, N. Y.	Marcus Loew Realty Corp.	7,946.27	4,000.66	23,169.00	100.	7,946.27	4,000.66	3,000.00	5,120.00
5/23	New York	Marcus Loew Realty Corp.	2,488.96	2,203.02	755.30	15.2	378.32	334.86	150.00	32.50
5/21-24	Triboro	Steinway-38th St. Corp.	3,754.48	2,841.21	6,315.60	80.2	3,011.09	2,278.65	700.00	1,075.03
5/27-29	Woodside	Woodside Operating Corp.	1,600.50	1,188.73	2,495.35	49.5	792.25	588.42	500.00	84.75
5/13-16	Akron	Main St. Akron Amusement Co.	1,914.47	2,400.82	3,770.15	76.4	1,462.66	1,834.23	754.03	105.12

**MICRO CARD**

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TRADE

MARK



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**1416**

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## Defendant, Loew's Inc., Exhibit L-6.

OPERATED BY CORPORATIONS WHOLLY OWNED BY LOEW'S INCORPORATED  
"JETTY LYNTON" (TOGETHER WITH OTHER ATTRACTIONS) WAS EXHIBITED

1 for Week	Box Office Re- ceipts of period in which Jetty Lynton (together with other attrac- tions) was Exhibited	Percentage of Weeks Receipts received during period in which Jetty Lynton (together with other attrac- tions) was Ex- hibited	Payroll and Trade Bills Ap- plicable to period in which Jetty Lynton (together with other attrac- tions) was Exhibited	Overhead Applicable to period in which Jetty Lynton (together with other attrac- tions) was Exhibited	Cost of Feature Jetty Lynton	Cost of Other Attractions during period in which Jetty Lynton was Exhibited	Profit or Loss Applicable to period in which Jetty Lynton (together with other attrac- tions) was Exhibited	Loew's Inc. Percentage of Interest	Amount of Loew's Inc. Profit or Loss during period in which Jetty Lynton (together with other attrac- tions) was Exhibited	% Share of Profit or Loss Allocated to Jetty Lynton
1-71	\$ 1,998.80	28.2	\$ 566.86	\$ 502.44	\$ 250.00	\$ 58.00	\$ 621.50	100	\$ 621.50	\$ 414.35
56	834.55	42.5	527.07	212.31	150.00	25.50	80.33	100	80.33	53.56
79	1,539.60	57.4	897.49	381.02	325.00	115.25	179.16	100	179.16	119.45
66	2,906.25	73.7	1,219.11	1,148.73	450.00	123.00	34.59	100	34.59	23.06
59	1,716.10	80.1	1,831.34	539.55	800.00	902.28	642.93	100	642.93	428.64
04	1,152.25	44.7	627.48	286.99	300.00	100.50	162.72	100	162.72	108.49
87	1,018.60	38.2	573.24	237.94	200.00	67.00	59.58	100	59.58	39.72
71	3,246.05	72.5	1,222.75	1,820.99	525.00	113.00	335.69	100	335.69	290.47
37	5,424.80	77.4	1,003.93	2,133.43	750.00	125.75	812.09	100	812.09	541.42
99	2,970.50	72.1	1,274.01	590.49	525.00	105.00	476.00	100	476.00	317.35
53	1,202.45	28.9	446.06	153.61	350.00	50.00	202.78	100	202.78	135.19
94	6,188.80	76.6	2,905.14	1,188.02	700.00	1,368.57	27.07	100	27.07	18.05
53	9,913.35	79.1	2,276.94	2,161.43	1,200.00	126.75	4,148.23	100	4,148.23	2,765.62
23	17,423.95	100	4,557.81	3,457.23	3,000.00	2,617.09	3,791.91	100	3,791.91	2,528.07
03	897.85	43	614.19	417.54	225.00	78.25	37.13	100	37.13	291.43
98	5,510.75	84.8	1,654.35	1,392.40	900.00	161.75	1,402.25	100	1,402.25	934.88
48	1,579.55	35	506.29	275.97	350.00	72.00	375.29	50	187.65	125.41
44	4,627.90	81	1,467.65	1,745.91	800.00	159.00	455.34	83 1/3	379.45	252.98
13	2,779.35	68.9	1,015.44	1,256.14	450.00	95.75	37.95	66 2/3	25.30	16.87
84	4,247.15	70.5	1,468.83	894.69	675.00	84.75	1,126.88	100	1,126.88	754.29
39	6,593.75	58.5	1,433.77	1,538.19	900.00	100.50	2,621.29	100	2,621.29	1,747.61
03	2,182.60	59.7	931.39	436.42	450.00	92.75	272.04	100	272.04	181.37
60	2,678.25	50	807.38	1,209.30	400.00	48.00	213.57	100	213.57	142.39
32	16,856.50	100	6,363.58	2,829.32	2,000.00	3,563.46	2,100.14	100	2,100.14	1,400.10
99	3,431.70	71.9	1,316.52	561.53	700.00	146.75	706.90	75	530.18	353.47
41	2,237.80	73	1,146.63	610.58	400.00	135.00	54.41	100	54.41	36.28
21	5,226.70	72.7	1,377.26	1,186.54	750.00	125.75	1,787.15	100	1,787.15	1,191.49
72	1,686.25	56.3	793.06	558.90	225.00	80.75	28.54	100	28.54	19.03
31	2,049.20	60.1	885.48	544.09	375.00	123.00	121.93	100	121.93	81.29
66	23,169.00	100	7,946.27	4,000.66	3,000.00	5,420.00	3,402.07	83 1/3	2,585.05	1,723.45
02	755.30	15.2	378.32	334.86	150.00	32.50	140.38	33 1/3	46.79	31.19
21	6,315.60	80.2	3,011.09	2,278.65	700.00	1,075.03	749.17	100	749.17	499.47
73	2,495.35	49	792.25	588.42	500.00	84.75	529.93	100	529.93	353.30



5/21-22	Circle	Mascol Amusement Co.	1,500.63	622.87	1,018.60	38.2	573.24	237.94	200.00	6	1,500.63	622.87	1,018.60	38.2	573.24	237.94	200.00	62.00	59.58	100	59.58	39.72
5/20-22	Commojore	Lomasch Theatre Corp.	2,511.71	1,686.55	3,246.05	72.5	1,222.75	1,820.99	525.00	11	2,511.71	1,686.55	3,246.05	72.5	1,222.75	1,820.99	525.00	113.00	135.69	100	135.69	290.47
5/28-29	Coney Island	Coney Island Theatre Inc.	2,071.74	2,756.37	5,424.80	77.4	1,603.53	2,133.43	750.00	12	2,071.74	2,756.37	5,424.80	77.4	1,603.53	2,133.43	750.00	125.75	812.09	100	812.09	541.42
5/20-22	Delancey	The Delancey Amusement Co.	1,767.00	818.99	2,970.50	72.1	1,274.01	590.49	525.00	10	1,767.00	818.99	2,970.50	72.1	1,274.01	590.49	525.00	105.00	476.00	100	476.00	317.35
5/26-27	86th St.	Loew's 86th St. Corp.	1,543.46	531.53	1,202.45	28.9	446.06	153.61	350.00	5	1,543.46	531.53	1,202.45	28.9	446.06	153.61	350.00	50.00	202.78	100	202.78	135.19
5/21-24	Orpheum	Loew's 86th St. Corp.	3,792.61	1,550.94	6,188.80	76.6	2,905.14	1,188.02	700.00	136	3,792.61	1,550.94	6,188.80	76.6	2,905.14	1,188.02	700.00	1,368.57	27.07	100	27.07	18.05
5/14-17	83rd St.	New Broad Company	2,878.56	2,732.53	9,913.35	79.1	2,276.94	2,161.43	1,200.00	12	2,878.56	2,732.53	9,913.35	79.1	2,276.94	2,161.43	1,200.00	126.75	4,148.23	100	4,148.23	2,765.62
5/7-13	Newark	New Broad Company	4,557.81	3,457.23	17,423.95	100	4,557.81	3,457.23	3,000.00	261	4,557.81	3,457.23	17,423.95	100	4,557.81	3,457.23	3,000.00	2,617.00	3,791.91	100	3,791.91	2,528.07
6/4-6	Elsmere	Crotona-Elsmere Corp.	1,428.35	971.03	897.85	43	614.19	417.54	225.00	7	1,428.35	971.03	897.85	43	614.19	417.54	225.00	78.25	137.13	100	137.13	291.43
5/28-31	Fairmount	Fairmont Theatre Corp.	1,950.89	1,641.98	5,510.75	84.8	1,654.35	1,392.40	900.00	16	1,950.89	1,641.98	5,510.75	84.8	1,654.35	1,392.40	900.00	161.75	1,402.25	100	1,402.25	934.88
5/21-22	42nd St.	Cedric Amusement Corp.	1,446.54	788.48	1,579.55	35	506.29	275.97	350.00	7	1,446.54	788.48	1,579.55	35	506.29	275.97	350.00	72.00	375.29	50	187.65	125.14
5/28-31	46th St.	Eton Amusement Corp.	1,811.91	2,155.44	4,627.90	81	1,467.65	1,745.91	800.00	15	1,811.91	2,155.44	4,627.90	81	1,467.65	1,745.91	800.00	159.00	455.34	83 1/3	379.45	252.98
5/28-30	Hillside	Hillside Theatre Corp.	1,473.74	1,823.13	2,779.35	68.9	1,015.41	1,256.14	450.00	9	1,473.74	1,823.13	2,779.35	68.9	1,015.41	1,256.14	450.00	95.75	37.95	66 2/3	25.30	16.87
5/28-30	Kameo	Abingdon Amusement Corp.	2,083.45	1,264.81	4,247.15	70.5	1,468.83	891.69	675.00	8	2,083.45	1,264.81	4,247.15	70.5	1,468.83	891.69	675.00	84.75	1,126.88	100	1,126.88	751.29
5/14-16	Lexington	Loew's Lexington Inc.	2,450.89	2,629.39	6,593.75	58.5	1,433.77	1,538.19	900.00	10	2,450.89	2,629.39	6,593.75	58.5	1,433.77	1,538.19	900.00	100.50	2,621.29	100	2,621.29	1,747.61
5/21-23	Lincoln Sq.	Humanovo Producing Co.	1,560.12	731.03	2,182.60	59.7	931.39	436.42	450.00	9	1,560.12	731.03	2,182.60	59.7	931.39	436.42	450.00	92.75	272.04	100	272.04	181.37
5/28-29	Melba	Nevins Amusement Corp.	1,614.75	2,418.60	2,678.25	50	807.38	1,209.30	400.00	4	1,614.75	2,418.60	2,678.25	50	807.38	1,209.30	400.00	48.00	213.57	100	213.57	142.39
5/14-20	Metropolitan	Putnam Theatrical Corp.	6,363.58	2,829.32	16,856.50	100	6,363.58	2,829.32	2,000.00	356	6,363.58	2,829.32	16,856.50	100	6,363.58	2,829.32	2,000.00	3,563.46	2,100.14	100	2,100.14	1,400.10
5/28-31	National	International Vaudeville Co.	1,831.04	780.99	3,431.70	71.9	1,316.52	561.53	700.00	14	1,831.04	780.99	3,431.70	71.9	1,316.52	561.53	700.00	146.75	706.90	75	530.18	353.47
5/21-24	116th St.	116th St. Operating Corp.	1,570.73	836.41	2,237.80	73	1,146.63	610.58	400.00	13	1,570.73	836.41	2,237.80	73	1,146.63	610.58	400.00	135.00	54.41	100	54.41	36.28
5/28-30	167th St.	167th St. Amusement Corp.	1,894.44	1,632.11	5,226.70	72.7	1,377.26	1,186.54	750.00	12	1,894.44	1,632.11	5,226.70	72.7	1,377.26	1,186.54	750.00	125.75	1,787.15	100	1,787.15	1,191.49
5/29-31	Palace	Palace-Brooklyn Corp.	1,408.64	992.72	1,686.25	56.3	793.06	558.90	225.00	8	1,408.64	992.72	1,686.25	56.3	793.06	558.90	225.00	80.75	28.54	100	28.54	19.03
5/21-23	Seventh Ave.	Marcus Loew Inc.	1,472.85	905.31	2,049.20	60.1	885.18	544.09	375.00	12	1,472.85	905.31	2,049.20	60.1	885.18	544.09	375.00	123.00	121.93	100	121.93	81.29
5/14-20	State, N. Y.	Marcus Loew Realty Corp.	7,946.27	4,000.66	23,169.00	100	7,946.27	4,000.66	3,000.00	512	7,946.27	4,000.66	23,169.00	100	7,946.27	4,000.66	3,000.00	5,120.00	3,102.07	83 1/3	2,585.05	1,723.15
5/23	New York	Marcus Loew Realty Corp.	2,488.96	2,203.02	755.30	15.2	378.32	334.86	150.00	3	2,488.96	2,203.02	755.30	15.2	378.32	334.86	150.00	32.50	140.38	33 1/3	46.79	31.19
5/21-24	Triboro	Steinway-38th St. Corp.	3,754.48	2,841.21	6,315.60	80.2	3,011.09	2,278.65	700.00	107	3,754.48	2,841.21	6,315.60	80.2	3,011.09	2,278.65	700.00	1,075.03	749.17	100	749.17	499.47
5/27-29	Woodside	Woodside Operating Corp.	1,600.50	1,188.73	2,495.35	49.5	792.25	588.42	500.00	8	1,600.50	1,188.73	2,495.35	49.5	792.25	588.42	500.00	84.75	529.93	100	529.93	353.30
5/13-16	Akron	Main St. Akron Amusement Co.	1,914.47	2,400.82	3,770.15	76.4	1,462.66	1,834.23	754.03	10	1,914.47	2,400.82	3,770.15	76.4	1,462.66	1,834.23	754.03	105.12	385.89	100	385.89	257.27
6/6-11	Atlanta, Grand	Loew's Atlanta Theatres Co.	1,252.92	1,966.50	2,074.20	100	1,252.92	1,966.50	414.84	14	1,252.92	1,966.50	2,074.20	100	1,252.92	1,966.50	414.84	144.57	1,704.63	50	1,704.63	1,136.48
4/29-5/5	Dayton	Loew's Dayton Theatre Co.	1,442.33	1,339.93	7,481.50	100	1,442.33	1,339.93	2,240.75	21	1,442.33	1,339.93	7,481.50	100	1,442.33	1,339.93	2,240.75	219.18	2,239.31	100	2,239.31	1,492.95
5/27-28-30-6/2	Harrisburg	Loew's Harrisburg Corp.	1,213.43	1,134.64	5,326.30	100	1,213.43	1,134.64	1,412.15	19	1,213.43	1,134.64	5,326.30	100	1,213.43	1,134.64	1,412.15	193.91	1,372.17	100	1,372.17	914.83
5/6-12	Houston	Loew's Houston Company	2,226.34	2,043.49	7,552.40	100	2,226.34	2,043.49	1,050.00	17	2,226.34	2,043.49	7,552.40	100	2,226.34	2,043.49	1,050.00	476.58	2,055.99	100	2,055.99	1,370.73
5/13-19	Indianapolis	Loew's Indiana Theatres	2,165.97	1,735.54	7,692.60	100	2,165.97	1,735.54	2,605.84	30	2,165.97	1,735.54	7,692.60	100	2,165.97	1,735.54	2,605.84	309.84	875.41	100	875.41	583.64
5/13-19	Valencia	Loew's Theatre & Realty Corp.	7,178.98	5,882.91	18,378.00	100	7,178.98	5,882.91	2,000.00	398	7,178.98	5,882.91	18,378.00	100	7,178.98	5,882.91	2,000.00	3,988.25	672.14	100	672.14	448.12
5/21-27	Kings	Loew's Theatre & Realty Corp.	3,828.00	6,383.88	45,553.20	100	3,828.00	6,383.88	1,500.09	23	3,828.00	6,383.88	45,553.20	100	3,828.00	6,383.88	1,500.09	230.75	3,610.57	100	3,610.57	2,407.17
5/21-24	Pittkin	Loew's Theatre & Realty Corp.	4,639.77	5,960.16	7,141.95	72.9	3,382.39	4,344.96	700.00	122	4,639.77	5,960.16	7,141.95	72.9	3,382.39	4,344.96	700.00	1,225.61	2,511.01	100	2,511.01	1,674.09
4/29-5/5	Kansas City Midland	Loew's Theatre & Realty Corp.	3,422.14	6,667.72	10,537.90	100	3,422.14	6,667.72	2,000.00	28	3,422.14	6,667.72	10,537.90	100	3,422.14	6,667.72	2,000.00	280.95	1,832.91	100	1,832.91	1,222.00
4/29-30-5/2-5	Nashville, Vendome	Loew's N and K Corp.	1,290.75	804.89	6,331.00	100	1,290.75	804.89	1,582.75	18	1,290.75	804.89	6,331.00	100	1,290.75	804.89	1,582.75	181.25	2,471.36	100	2,471.36	1,647.66
5/27-6/2	Reading	Reading Theatre Corp.	1,351.40	1,375.56	7,363.29	100	1,351.40	1,375.56	1,647.41	21	1,351.40	1,375.56	7,363.29	100	1,351.40	1,375.56	1,647.41	212.58	2,776.34	100	2,776.34	1,850.99
4/29-5/5	Rochester	Clinton-Court Corp.	3,274.20	3,081.29	10,161.45	100	3,274.20	3,081.29	1,239.50	365	3,274.20	3,081.29	10,161.45	100	3,274.20	3,081.29	1,239.50	3,651.50	1,085.04	100	1,085.04	723.40
5/6-12	St. Louis	Loew's St. Louis Rlty & Amusement Corp.	4,489.10	3,254.70	12,790.05	100	4,489.10	3,254.70	2,750.00	45	4,489.10	3,254.70	12,790.05	100	4,489.10	3,254.70	2,750.00	457.33	1,838.42	100	1,838.42	1,225.67
5/27-31-6/1-2	Wilmington	Parkway Wilmington Corp.	1,049.22	246.58	4,188.40	100	1,049.22	246.58	1,459.78	13	1,049.22	246.58	4,188.40	100	1,049.22	246.58	1,459.78	137.58	1,295.24	100	1,295.24	863.54
			\$116,847.63	\$97,714.50	\$282,198.99		\$93,468.08	\$79,568.11	\$46,832.05	\$28.79	\$116,847.63	\$97,714.50	\$282,198.99		\$93,468.08	\$79,568.11	\$46,832.05	\$28,792.84	\$33,537.91		\$32,686.88	\$21,792.28



## Defendant, Loew's Inc., Exhibit L-7.

**OVERHEAD EXPENSE OF THEATRES OPERATED BY CORPORATIONS WHOLLY OWNED BY LOEW'S INCORPORATED**  
**FOR THE FISCAL YEAR ENDED AUGUST 31, 1932**

Theatre	Operated by	Rent	Insurance Premiums	Real Estate Taxes and Licenses	Accrued Interest Payable	Investment Interest	Depreciation and Amortization	Sundry Expense	Rent Income	Other Income
Astoria	Astoria Theatre Corp.	-0-	\$ 3,230.49	\$ 14,045.25	\$ 11,687.50	\$ 26,108.00	\$ 47,037.00	\$ 379.74	\$ 7,399.96	\$ 2,439.2
Century	do.	-0-	1,769.20	3,836.25	5,570.64	3,300.00	12,150.00	51.00	-0-	700.0
Avenue B	Natoma Amusement Co.	-0-	1,983.00	7,492.00	8,250.00	10,855.00	11,102.00	140.08	4,305.00	999.9
Bedford	Berford Amusement Corp.	-0-	2,277.82	10,383.25	13,387.50	20,642.00	34,280.00	89.56	-0-	9.8
Boulevard	Loew's Boulevard Corp.	\$ 30,166.66	2,169.63	500.00	-0-	-0-	5,487.00	-0-	-0-	3,296.7
Brevort	Brevort Holding Co., Inc.	-0-	2,398.43	6,679.02	9,762.50	4,736.00	11,976.00	139.30	2,300.00	5.1
Circle	Mascot Amusement Co.	26,666.67	3,453.27	14,752.06	-0-	1,023.00	2,788.00	147.65	16,426.01	15.3
Commodore	Lomasch Theatre Corp.	-0-	3,452.59	16,665.76	22,912.50	49,704.00	39,882.00	426.42	1,420.41	1,014.0
Coney Island	Coney Island Theatre Inc.	30,000.00	3,328.88	19,376.43	40,194.01	53,265.00	38,359.00	11,387.96	50,279.98	2,300.2
Delancey	Delancey Amusement Co.	-0-	2,100.14	16,808.00	14,575.00	10,108.00	10,225.00	606.44	10,035.00	1,860.0
86th St.	Loew's 86th St. Corp.	-0-	2,070.03	11,918.00	18,882.50	(10,902.00)	12,472.00	398.85	6,000.00	1,200.0
Orpheum	do.	-0-	2,631.02	19,808.02	11,270.83	17,352.00	36,064.00	4.71	3,458.33	3,723.3
83rd St.	New Broad Company	-0-	3,768.89	32,266.12	73,457.54	3,129.00	61,398.00	-0-	31,798.50	129.2
Newark	do.	83,000.00	2,909.40	54,284.85	48,936.00	3,928.00	69,470.00	1,602.61	81,233.26	3,121.1
Elsmere	Crotona-Elsmere Corp.	-0-	1,754.40	6,117.54	20,504.50	8,014.00	19,066.00	136.20	4,195.00	904.2
Fairmount	Fairmount Theatre Corp.	-0-	3,125.82	17,947.50	-0-	43,060.00	32,403.00	1,279.08	12,408.98	23.3
42nd St.	Cedric Amusement Corp.	12,000.00	1,643.71	23,115.02	-0-	1,628.00	3,339.00	125.65	-0-	850.3
46th St.	Eton Amusement Corp.	-0-	3,609.93	14,089.42	2,284.24	57,199.00	39,982.00	-0-	4,200.00	881.1
Hillside	Hillside Theatre Corp.	-0-	2,840.79	19,001.64	19,736.10	14,513.00	39,040.13	3,906.15	4,220.00	15.3
Kameo	Abington Amusement Corp.	-0-	3,065.63	8,976.00	13,080.00	19,096.00	21,424.00	130.00	-0-	1.3
Lexington	Loew's Lexington Inc.	-0-	1,136.62	42,050.00	35,814.79	15,876.00	41,857.00	-0-	-0-	6.3
Lincoln Sq.	Humanovo Producing Co.	30,000.00	1,457.71	200.02	-0-	2,605.00	5,461.00	34.30	-0-	1,744.3
Melba	Nevins Amusement Co.	-0-	2,950.25	16,725.00	32,279.25	25,481.00	48,146.00	1,289.90	1,075.00	29.6
Metropolitan	Putnam Theatrical Corp.	-0-	5,495.81	37,984.75	39,937.17	31,786.00	42,563.00	839.80	11,473.42	8.3
National	International Vaudeville Co.	30,000.00	1,999.24	200.02	-0-	3,980.00	5,871.00	61.38	900.00	600.0
116th St.	116th St. Operating Corp.	28,262.67	2,170.79	5,736.02	2,751.35	1,321.00	4,879.00	-0-	-0-	1,527.3
167th St.	167th St. Amusement Corp.	40,000.00	2,955.96	12,166.50	-0-	14,939.00	16,011.00	25.82	-0-	1,228.3
Palace	Palace Brooklyn Corp.	-0-	1,864.96	6,150.00	13,020.00	11,420.00	19,910.00	43.75	-0-	787.3
Seventh Ave.	Marcus Loew Inc.	20,000.00	1,937.40	7,291.04	-0-	7,142.00	11,183.00	133.09	-0-	610.3
State, N. Y.	Firm Amusement Corp.	175,000.00	3,685.38	500.00	-0-	6,720.00	47,198.25	4,930.77	-0-	-0-
New York	do.	105,714.28	3,387.20	400.00	-0-	2,203.00	174.07	7,675.54	1,672.26	3,325.3
Triboro	Steinway 38th St. Corp.	-0-	4,314.50	17,587.50	437.80	89,474.00	46,473.00	1,691.78	10,850.19	1,385.3
Woodside	Woodside Operating Corp.	34,821.81	2,405.98	9,225.50	9,246.67	5,246.00	3,398.00	1,314.71	3,833.32	11.3
Akron	Main St. Akron Amusement Co.	6,767.53	1,512.98	13,065.44	-0-	67,464.00	38,629.00	112.38	2,690.00	18.3
Atlanta, Grand	Loew's Atlanta Theatre Co.	88,079.67	7,673.14	18,421.02	-0-	2,747.00	6,513.00	23,943.16	65,920.92	829.3

**Defendant, Loew's Inc., Exhibit L-7.**

**USE OF THEATRES OPERATED BY CORPORATIONS WHOLLY OWNED BY LOEW'S INCORPORATED  
FOR THE FISCAL YEAR ENDED AUGUST 31, 1932**

Rent	Insurance Premiums	Real Estate Taxes and Licenses	Accrued Interest Payable	Investment Interest	Depreciation and Amortization	Sundry Expense	Rent Income	Other Income	Total for Year	Per Week 1/52
-0-	\$ 3,230.49	\$ 14,045.25	\$ 11,687.50	\$ 26,108.00	\$ 47,037.00	\$ 379.74	\$ 7,399.96	\$ 2,439.23	\$ 92,648.79	\$ 1,781.71
-0-	1,769.20	3,830.25	5,570.64	3,300.00	12,150.00	51.00	-0-	700.00	25,977.09	499.56
-0-	1,983.00	7,492.00	8,250.00	10,855.00	11,102.00	140.08	4,305.00	999.96	34,517.12	663.79
-0-	2,277.82	10,383.25	13,387.50	20,642.00	34,280.00	89.56	-0-	9.87	81,050.26	1,558.66
30,166.66	2,169.63	500.00	-0-	-0-	5,487.00	-0-	-0-	3,296.72	35,026.57	673.59
-0-	2,398.43	6,679.02	9,762.50	4,736.00	11,976.00	139.30	2,300.00	5.19	33,386.06	642.04
26,666.67	3,453.27	14,752.06	-0-	1,023.00	2,788.00	147.65	16,426.01	15.53	32,389.11	622.87
-0-	3,452.59	16,665.76	22,912.50	49,704.00	39,882.00	426.42	1,420.41	1,014.04	130,608.82	2,511.71
30,000.00	3,328.88	19,376.43	40,194.01	53,265.00	38,359.00	11,387.96	50,279.98	2,300.22	143,331.08	2,756.37
-0-	2,100.11	16,808.00	14,575.00	10,108.00	10,225.00	606.44	10,035.00	1,800.00	42,587.55	818.99
-0-	2,070.03	11,918.00	18,882.50	(10,902.00)	12,472.00	398.85	6,000.00	1,200.05	27,639.33	531.53
-0-	2,631.02	19,808.02	11,270.83	17,352.00	36,764.00	4.71	3,458.33	3,723.36	80,648.89	1,550.94
-0-	3,768.89	32,266.12	73,457.54	3,129.00	61,398.00	-0-	31,798.50	129.24	142,091.81	2,732.53
83,000.00	2,909.40	54,284.85	48,936.00	3,928.00	69,470.00	1,602.61	81,233.26	3,121.44	179,776.16	3,457.23
-0-	1,754.40	6,117.54	20,504.50	8,014.00	19,066.00	136.20	4,195.00	904.32	50,493.32	971.03
-0-	3,125.82	17,947.50	-0-	43,060.00	32,403.00	1,279.08	12,408.98	23.56	85,382.86	1,641.98
12,000.00	1,643.71	23,115.02	-0-	1,628.00	3,339.00	125.65	-0-	850.27	41,001.11	788.48
-0-	3,609.93	14,089.42	2,284.24	57,199.00	39,982.00	-0-	4,200.00	881.92	112,082.67	2,155.44
-0-	2,840.70	19,001.64	19,736.10	14,513.00	39,040.13	3,906.15	4,220.00	15.28	94,802.53	1,823.13
-0-	3,065.63	8,976.00	13,080.00	19,096.00	24,424.00	130.00	-0-	1.26	65,770.37	1,264.81
-0-	1,136.62	42,050.00	35,814.79	15,876.00	41,857.00	-0-	-0-	6.30	136,728.11	2,629.39
30,000.00	1,457.71	200.02	-0-	2,605.00	5,461.00	34.30	-0-	1,744.34	38,013.69	731.03
-0-	2,950.25	16,725.00	32,279.25	25,481.00	48,146.00	1,289.90	1,075.00	29.06	125,767.34	2,418.60
-0-	5,495.81	37,984.75	39,937.17	31,786.00	42,563.00	839.80	11,473.42	8.42	147,124.69	2,829.32
30,000.00	1,999.24	200.02	-0-	3,980.00	5,871.00	617.38	900.00	600.00	40,611.64	780.99
28,262.67	2,170.79	5,736.02	2,751.35	1,321.00	4,879.00	-0-	-0-	1,527.54	43,493.29	836.41
40,000.00	2,955.96	12,166.50	-0-	14,939.00	16,011.00	25.82	-0-	4,228.47	84,869.81	1,632.11
-0-	1,864.96	6,150.00	13,020.00	11,420.00	19,910.00	43.75	-0-	787.50	51,621.21	992.72
20,000.00	1,937.40	7,291.04	-0-	7,142.00	11,183.00	133.09	-0-	610.45	47,076.08	905.31
175,000.00	3,685.38	500.00	-0-	6,720.00	17,198.25	4,930.77	-0-	-0-	208,034.40	4,000.66
105,714.28	3,387.20	400.00	-0-	2,203.00	174.07	7,675.54	1,672.26	3,325.00	114,556.83	2,203.02
-0-	4,314.50	17,587.50	437.80	89,474.00	46,473.00	1,691.78	10,850.19	4,385.71	147,742.68	2,841.21
34,821.81	2,405.98	9,225.50	9,246.67	5,246.00	3,398.00	1,314.71	3,833.32	11.16	61,814.19	1,188.73
6,767.53	1,512.98	13,065.44	-0-	67,464.00	38,629.00	112.38	2,690.00	18.68	124,842.63	2,400.82
88,079.67	7,673.14	18,421.02	-0-	2,747.00	6,513.00	23,943.16	65,920.92	829.72	80,626.35	1,966.50



Uncle Commodore Coney Island Delancey	Alaska Amusement Co. Lomasch Theatre Corp. Coney Island Theatre Inc. Delancey Amusement Co.	-0- 30,000.00 -0- -0-	3,452.59 3,328.88 2,100.11 -0-	16,665.76 19,376.43 16,808.00 -0-	22,912.50 40,194.01 14,575.00 -0-	49,704.00 53,265.00 10,108.00 -0-	39,882.00 38,359.00 10,225.00 -0-	426.42 11,387.96 606.44 -0-	1,420.41 50,279.98 10,035.00 -0-	1 2 1 -
86th St. Orpheum 83rd St. Newark Elsmere	Loew's 86th St. Corp. do. New Broad Company do. Crotona-Elsmere Corp.	-0- -0- -0- 83,000.00 -0-	2,070.03 2,631.02 3,768.89 2,909.40 1,754.40	11,918.00 19,808.02 32,266.12 54,284.85 6,117.54	18,882.50 11,270.83 73,457.54 48,936.00 20,504.50	(10,902.00) 17,352.00 3,129.00 3,928.00 8,014.00	12,472.00 36,764.00 61,398.00 69,470.00 19,066.00	398.85 4.71 -0- 1,602.61 136.20	6,000.00 3,458.33 31,798.50 81,233.26 4,195.00	1 3 3 3 -
Fairmount 42nd St. 16th St. Hillside Kameo	Fairmont Theatre Corp. Cedar Amusement Corp. Eton Amusement Corp. Hillside Theatre Corp. Abington Amusement Corp.	-0- 12,000.00 -0- -0- -0-	3,125.82 1,643.71 3,609.93 2,840.79 3,065.63	17,947.50 23,115.02 14,089.42 19,001.64 8,976.00	-0- -0- 2,284.24 19,736.10 13,080.00	43,060.00 1,628.00 57,199.00 14,513.00 49,096.00	32,403.00 3,339.00 39,982.00 39,040.13 21,424.00	1,279.08 125.65 -0- 3,906.15 130.00	12,408.98 -0- 4,200.00 4,220.00 -0-	- - - - -
Lexington Lincoln Sq. Melba Metropolitan National	Loew's Lexington Inc. Humanovs Producing Co. Nevins Amusement Co. Putnam Theatrical Corp. International Vaudeville Co.	-0- 30,000.00 -0- -0- 30,000.00	1,136.62 1,457.71 2,950.25 5,495.81 1,999.24	42,050.00 200.02 16,725.00 37,984.75 200.02	35,814.79 -0- 32,279.25 39,937.17 -0-	15,876.00 2,605.00 25,481.00 31,786.00 3,980.00	41,857.00 5,461.00 48,146.00 42,563.00 5,871.00	-0- 34.30 1,289.90 839.80 61.38	-0- -0- 1,075.00 11,473.42 900.00	- 1 - - -
116th St. 167th St. Palace Seventh Ave. State, N. Y.	116th St. Operating Corp. 167th St. Amusement Corp. Palace Brooklyn Corp. Marcus Loew Inc. Firm Amusement Corp.	28,262.67 40,000.00 -0- 20,000.00 175,000.00	2,170.79 2,955.96 1,864.96 1,937.40 3,685.38	5,736.02 12,166.50 6,150.00 7,291.04 500.00	2,751.35 -0- 13,020.00 -0- -0-	1,321.00 14,939.00 11,420.00 7,142.00 6,720.00	4,879.00 16,011.00 19,910.00 11,183.00 17,198.25	-0- 25.82 43.75 133.09 4,930.77	-0- -0- -0- -0- -0-	1 1 - - -
New York Triboro Woodside Akron Atlanta, Grand	do. Steinway-38th St. Corp. Woodside Operating Corp. Main St. Akron Amusement Co. Loew's Atlanta Theatre Co.	105,714.28 -0- 34,821.81 6,767.53 88,079.67	3,387.20 4,314.50 2,405.98 1,512.98 7,673.14	400.00 17,587.50 9,225.50 13,065.44 18,421.02	-0- 437.80 9,246.67 -0- -0-	2,203.00 89,474.00 5,246.00 67,464.00 2,747.00	174.07 46,473.00 3,398.00 38,629.00 6,513.00	7,675.54 1,691.78 1,314.71 112.38 23,943.16	1,672.26 10,850.19 3,833.32 2,690.00 65,920.92	3 1 - - -
Dayton Harrisburg Houston Indianapolis Valencia	Loew's Dayton Theatre Co. Loew's Harrisburg Corp. Loew's Houston Co. Loew's Indiana Theatres Loew's Theatre & Realty Corp.	25,002.15 10,833.30 87,000.00 83,305.01 200,193.72	1,319.47 2,222.17 1,181.34 1,900.80 5,460.42	14,489.98 5,999.18 1,006.22 -0- 40,944.45	7,700.00 -0- -0- -0- 394.40	11,921.00 12,772.00 10,528.00 -0- 27,008.00	17,402.80 30,444.00 6,483.00 5,057.00 30,826.00	1,215.68 87.06 90.26 1.08 1,084.45	8,770.00 3,340.78 -0- -0- -0-	- - - - -
Kings Pitkin Kansas City, Midland Nashville, Vendome Reading	do. do. do. Loew's N and K Corp. Reading Theatre Corp.	225,761.64 199,812.00 427,706.99 300.00 12,883.35	5,047.03 3,923.24 1,938.75 1,730.01 1,890.83	39,875.00 42,486.25 111.07 3,841.84 7,457.11	70.54 268.80 398.49 2,850.00 8,050.00	43,381.00 52,257.00 4,111.00 16,610.00 17,610.00	37,463.00 33,613.00 6,647.00 16,700.00 33,243.00	988.50 445.70 34,677.43 -0- 318.84	20,625.00 21,994.20 126,128.88 -0- 9,900.00	- - 2 - -
Rochester St. Louis Wilmington	Clinton-Court Corp. Loew's St. Louis Rlty. & Am. Corp. Parkway-Wilmington Corp.	152,500.00 59,200.00 -0-	1,545.43 2,403.47 753.26	-0- 44,585.02 1,631.07	-0- 23,600.00 32.91	7,110.00 -0- 3,350.00	3,419.00 73,641.00 2,619.12	22,834.08 6,649.56 254.90	-0- 37,274.97 -0-	27 3 -
Total		\$2,224,977.45	\$129,847.18	\$708,192.13	\$511,343.53	\$831,720.00	\$1,154,468.37	\$131,695.32	\$566,129.37	\$70

\* 41 Weeks

\*\* 35 Weeks

-0-	3,452.59	16,665.76	22,912.50	49,704.00	39,882.00	426.42	1,420.41	1,014.04	130,608.82	2,311.71
30,000.00	3,328.88	19,376.43	40,194.01	53,265.00	38,359.00	11,387.96	50,279.98	2,300.22	143,331.08	2,756.37
-0-	2,100.11	16,808.00	14,555.00	10,108.00	10,225.00	606.44	10,035.00	1,800.00	42,587.55	818.99
-0-	2,070.03	11,918.00	18,882.50	10,902.00	12,472.00	398.85	6,000.00	1,201.05	27,639.33	531.53
-0-	2,631.02	19,808.02	11,270.83	17,352.00	36,764.00	4.71	3,458.33	3,523.36	80,648.89	1,550.94
-0-	3,768.89	32,266.12	73,457.54	3,129.00	61,398.00	-0-	31,798.50	129.24	142,091.81	2,732.53
83,000.00	2,909.40	54,284.85	48,936.00	3,928.00	60,470.00	1,602.61	81,233.26	3,121.44	179,776.16	3,457.23
-0-	1,754.40	6,117.54	20,504.50	8,014.00	19,066.00	136.20	4,195.00	904.32	50,493.32	971.03
-0-	3,125.82	17,947.50	-0-	43,060.00	32,403.00	1,279.08	12,408.98	23.56	85,382.86	1,641.98
12,000.00	1,643.71	23,115.02	-0-	1,628.00	3,339.00	125.65	-0-	850.27	41,001.11	788.48
-0-	3,609.93	14,089.42	2,284.24	57,199.00	39,982.00	-0-	4,200.00	881.92	112,082.67	2,155.44
-0-	2,840.79	19,001.64	19,736.10	14,513.00	39,040.13	3,906.15	4,220.00	15.28	94,802.53	1,823.13
-0-	3,065.63	8,976.00	13,080.00	19,096.00	21,424.00	130.00	-0-	1.26	65,770.37	1,264.81
-0-	1,136.62	42,050.00	35,814.79	15,876.00	41,857.00	-0-	-0-	6.30	136,728.11	2,629.39
30,000.00	1,457.71	200.02	-0-	2,605.00	5,461.00	34.30	-0-	1,744.34	38,013.69	731.03
-0-	2,950.25	16,725.00	32,279.25	25,481.00	48,146.00	1,289.90	1,078.00	29.00	125,767.34	2,418.60
-0-	5,495.81	37,984.75	39,937.17	31,786.00	42,563.00	839.80	11,473.42	8.42	147,124.69	2,829.32
30,000.00	1,999.24	200.02	-0-	3,980.00	5,871.00	61.38	900.00	600.00	40,611.64	780.99
28,262.67	2,170.79	5,736.02	2,751.35	1,321.00	4,879.00	-0-	-0-	1,527.54	43,493.29	836.41
40,000.00	2,955.96	12,166.50	-0-	14,939.00	16,011.00	25.82	-0-	1,228.47	84,869.81	1,632.11
-0-	1,864.96	6,150.00	13,020.00	11,420.00	19,910.00	43.75	-0-	787.50	51,621.21	992.72
20,000.00	1,937.40	7,291.04	-0-	7,142.00	11,183.00	133.09	-0-	610.45	47,076.08	905.31
175,000.00	3,685.38	500.00	-0-	6,720.00	17,198.25	4,930.77	-0-	-0-	208,034.40	4,000.66
105,714.28	3,387.20	400.00	-0-	2,203.00	174.07	7,675.54	1,352.26	3,325.00	114,556.83	2,203.02
-0-	4,314.50	17,587.50	437.80	89,474.00	46,473.00	1,691.78	10,850.19	1,385.71	147,742.68	2,841.21
34,821.81	2,405.98	9,225.50	9,246.67	3,246.00	3,398.00	1,314.71	3,833.32	11.16	61,814.19	1,188.73
6,767.53	1,512.98	13,065.44	-0-	67,461.00	38,629.00	112.38	2,690.00	18.68	124,842.65	2,400.82
88,079.67	7,673.14	18,421.02	-0-	2,745.00	6,513.00	23,443.16	65,920.92	829.72	80,626.35	1,966.50*
25,002.15	1,319.47	14,489.98	7,700.00	11,921.00	17,402.80	1,215.68	8,770.00	604.85	69,676.23	1,339.93
10,833.30	2,222.17	5,999.18	-0-	12,772.00	30,444.00	87.06	3,340.78	15.66	59,001.27	1,134.64
87,000.00	1,181.34	1,006.22	-0-	10,528.00	6,483.00	90.26	-0-	27.41	106,261.41	2,043.49
83,305.01	1,900.80	-0-	-0-	-0-	5,057.00	1.08	-0-	15.78	90,248.11	1,735.54
200,193.72	5,460.42	40,944.45	394.40	27,008.00	30,826.00	1,084.45	-0-	-0-	305,911.44	5,882.91
225,761.64	5,047.03	39,875.00	70.54	43,381.00	37,463.00	988.50	20,625.00	-0-	331,961.71	6,383.88
199,812.00	3,923.24	42,486.25	268.80	52,257.00	33,613.00	445.70	21,994.20	883.15	309,928.64	5,960.16
427,706.99	1,938.75	111.07	398.49	4,111.00	6,647.00	24,457.43	126,128.88	2,740.44	346,721.41	6,667.72
300.00	1,730.01	3,841.84	2,850.00	16,610.00	16,700.00	-0-	-0-	177.32	41,854.53	804.89
12,883.35	1,890.83	7,457.11	8,050.00	17,610.00	33,243.00	318.84	9,900.00	24.07	71,529.06	1,375.56
152,500.00	1,545.43	-0-	-0-	7,110.00	3,419.00	22,834.08	-0-	27,181.28	160,227.23	3,081.29
59,200.00	2,403.47	44,585.02	23,600.00	-0-	73,641.00	6,649.56	37,274.97	3,559.44	169,244.64	3,254.70
-0-	753.26	1,631.07	32.91	3,350.00	2,619.12	254.90	-0-	10.99	8,630.27	246.58**
2,224,977.45	\$129,847.88	\$708,192.13	\$511,343.53	\$831,720.00	\$1,154,468.37	\$131,695.32	\$566,129.37	\$70,784.20	\$5,055,330.41	\$97,714.50



## Defendant, Loew's Inc., Exhibit L-8.

PROFIT OR LOSS OF THEATRES OPERATED BY CORPORATIONS PARTLY OWNED BY LOEW'S INCORPORATED  
DURING PERIODS IN WHICH "LETTY LYNTON" (TOGETHER WITH OTHER ATTRACTIONS) WAS EXHIBITED

Play Date (1932)	Name of Theatre	Operated By	Payroll and Trade Bills for Entire Week	Overhead for Entire Week	Box Office Re- ceipts of period in which Letty Lynton (together with other at- tractions) was Exhibited	Percentage of Weeks Receipts received during period in which Letty Lynton (together with other attrac- tions) was Ex- hibited	Payroll and Trade Bills Ap- plicable to period in which Letty Lynton (together with other at- tractions) was Exhibited	Overhead Applicable to period in which Letty Lynton (together with other attrac- tions) was Exhibited	Cost of Feature Letty Lynton	Cost of Attractions during in which Lynton Exhibited
6/4-6	Alpine	Diamond Amusement Corp.	\$ 1,830.37	\$ 712.28	\$ 2,102.20	51.6	\$ 944.47	\$ 367.54	\$ 450.00	\$
5/28-30	Burland	Midas Amusement Co.	1,846.41	847.26	3,628.25	79.5	1,467.90	673.57	600.00	
5/28-30	Burnside	Walton-Burnside Amusement Co.	1,730.89	1,099.29	3,800.25	69.7	1,206.43	766.21	600.00	
5/28-31	Gates	Gates Theatre Corp.	3,771.13	1,689.71	6,461.25	80.3	3,028.22	1,356.84	800.00	1
6/4-6	Inwood	Dyckwood Amusement Corp.	1,514.04	762.42	1,638.50	48.7	737.34	371.30	375.00	
6/4-6	New Rochelle	New Rochelle Consolidated Corp.	2,161.90	1,486.97	3,976.35	60.5	1,307.95	899.62	675.00	
5/27-29	Premier	Sutter Amusement Corp.	1,919.43	1,691.63	3,267.90	75.8	1,454.93	1,282.26	550.00	
5/21-23	Rio	Chateau Amusement Corp.	1,616.47	1,259.98	2,874.05	61.4	992.51	773.63	300.00	
6/2-3	Spooner	Evergreen Amusement Corp.	1,461.63	962.19	1,155.35	24.9	363.95	239.59	250.00	
6/1-3	Victoria	Marloew Amusement Corp.	1,672.57	1,476.72	2,006.95	33	551.95	487.32	300.00	
6/11-13	Victory	Hemlock Theatre Corp.	1,280.79	595.50	1,127.45	42.2	540.49	251.30	200.00	
6/4-6	Warwick	Warwick Amusement Corp.	1,275.37	310.84	1,007.30	47.5	605.80	147.65	150.00	
6/4-7	Yonkers	Yonkers Operating Corp.	3,321.73	1,017.32	3,950.65	69.5	2,308.60	707.04	700.00	1
5/13-19	Boston, Orpheum	Loew's Boston Theatres Co.	4,791.48	3,664.49	15,847.70	100	4,791.48	3,664.49	1,250.00	3
5/13-19	Cleveland, Allen	Loew's Ohio Theatres Inc.	2,768.57	3,543.08	13,307.65	100	2,768.57	3,543.08	2,103.82	
6/12-15	" Granada	Loew's Ohio Theatres Inc.	1,450.46	1,824.46	2,303.90	75.4	1,093.65	1,375.64	275.00	
6/26-29	" Mall	Loew's Ohio Theatres Inc.	1,118.74	873.80	925.05	61.6	689.14	538.26	125.00	
6/11-17	" Park	Loew's Ohio Theatres Inc.	1,503.16	1,988.18	5,005.85	100	1,503.16	1,988.18	500.00	
5/20-23	Evansville, Victory	Evansville Operating Corp.	1,044.65	2,157.94	2,944.00	81.7	853.48	1,763.04	300.00	
6/10-11-13/16	London, Loew's	Loew's London Theatres Ltd.	1,041.99	1,229.97	2,670.66	100	1,041.99	1,229.97	750.00	
5/13-19	Toledo, Valentine	Toledo Operating Corp.	1,410.31	514.97	5,002.85	100	1,410.31	514.97	1,250.71	
6/3-4-6/8-9	Toronto, Yonge St.	Marcus Loew's Theatres Ltd.	2,189.71	2,653.18	6,157.88	100	2,189.91	2,653.18	1,750.00	
5/13-19	Washington, Palace	Anchor Theatrical Corp.	4,841.01	2,015.53	17,623.40	100	4,841.01	2,015.53	5,811.70	
6/4-7	White Plains, State	Suburban Theatre Corp.	1,347.80	904.73	3,541.65	71.7	966.37	648.69	1,232.59	
			<u>\$48,910.61</u>	<u>\$35,282.44</u>	<u>\$112,327.04</u>		<u>\$37,659.61</u>	<u>\$28,258.90</u>	<u>\$21,298.82</u>	<u>\$9,</u>

Words and figures in italics appeared red in original.

## Defendant, Loew's Inc., Exhibit L-8.

EATRES OPERATED BY CORPORATIONS PARTLY OWNED BY LOEW'S INCORPORATED  
WHICH "LETTY LYNTON" (TOGETHER WITH OTHER ATTRACTIONS) WAS EXHIBITED

Overhead for Entire Week	Box Office Receipts of period in which Letty Lynton (together with other attractions) was Exhibited	Percentage of Weeks Receipts received during period in which Letty Lynton (together with other attractions) was Exhibited	Payroll and Trade Bills Applicable to period in which Letty Lynton (together with other attractions) was Exhibited	Overhead Applicable to period in which Letty Lynton (together with other attractions) was Exhibited	Cost of Feature Letty Lynton	Cost of Other Attractions during period in which Letty Lynton was Exhibited	Profit or Loss Applicable to period in which Letty Lynton (together with other attractions) was Exhibited	Loew's Inc. Percentage of Interest	Amount of Loew's Inc. Profit or Loss during period in which Letty Lynton (together with other attractions) was Exhibited	% Share of Profit or Loss Allocated to Letty Lynton
\$ 712.28	\$ 2,102.20	51.6	\$ 944.47	\$ 367.54	\$ 450.00	\$ 110.75	\$ 229.44	50	\$ 114.72	\$ 76.48
847.26	3,628.25	79.5	1,467.90	673.57	600.00	125.75	761.03	50	380.52	253.69
1,099.29	3,800.25	69.7	1,206.43	766.21	600.00	110.75	1,116.86	95	1,061.02	707.38
1,689.71	6,461.25	80.3	3,028.22	1,356.84	800.00	1,060.75	215.44	53.89	116.10	77.40
762.42	1,638.50	48.7	737.34	371.30	375.00	78.25	76.61	66.67	51.08	34.06
1,486.97	3,976.35	60.5	1,307.95	899.62	675.00	112.25	981.53	42.00	412.24	274.84
1,691.63	3,267.90	75.8	1,454.93	1,282.26	550.00	125.75	145.04	50	72.52	48.35
1,259.98	2,874.05	61.4	992.51	773.63	300.00	97.25	710.66	50	355.33	236.90
962.19	1,155.35	24.9	363.95	239.59	250.00	58.00	243.81	50	121.91	81.28
1,476.72	2,006.95	33.	551.95	487.32	300.00	330.00	337.68	56.25	189.95	126.64
595.50	1,127.45	42.2	540.49	251.30	200.00	89.50	46.16	75	34.62	23.08
310.84	1,007.30	47.5	605.80	147.65	150.00	83.25	20.60	50	10.30	6.87
1,017.32	3,950.65	69.5	2,308.60	707.04	700.00	1,281.86	1,046.85	66.67	697.93	465.31
3,664.49	15,847.70	100.	4,791.48	3,664.49	1,250.00	3,197.58	2,944.15	50.	1,472.08	981.44
3,543.08	13,307.65	100.	2,768.57	3,543.08	2,103.82	352.62	4,539.56	86.71	3,936.25	2,624.30
1,824.46	2,303.99	75.4	1,093.65	1,375.64	275.00	55.12	495.51	86.71	429.66	286.45
873.80	925.05	61.6	689.14	538.26	125.00	39.12	466.47	86.71	404.48	269.67
1,988.18	5,005.85	100.	1,503.16	1,988.18	500.00	85.16	929.35	86.71	805.84	537.25
2,157.94	2,944.00	81.7	853.48	1,763.04	300.00	110.00	82.52	50.	41.26	27.51
1,229.97	2,670.66	100.	1,041.99	1,229.97	750.00	240.00	591.30	25.	147.83	98.56
514.97	5,002.85	100.	1,410.31	514.97	1,250.71	292.62	1,534.24	50.	767.12	511.44
2,653.18	6,157.88	100.	2,189.91	2,653.18	1,530.00	550.00	985.21	58.75	578.81	385.89
2,015.53	17,623.40	100.	4,841.04	2,015.53	5,811.70	429.60	4,525.56	71.25	3,224.46	2,149.75
904.73	3,541.65	71.7	966.37	648.69	1,232.59	86.08	607.92	37.50	227.97	151.99
<u>\$35,282.44</u>	<u>\$112,327.04</u>		<u>\$37,659.61</u>	<u>\$28,258.90</u>	<u>\$21,298.82</u>	<u>\$9,102.01</u>	<u>\$16,007.70</u>		<u>\$10,909.02</u>	<u>\$7,273.05</u>



**Defendant, Loew's Inc., Exhibit L-8+.**

**PROFIT OF COMPANIES WHICH ARE LANDLORDS OF THEATRES LISTED AS MANAGED BY MARCUS LOEW BOOKING AGENCY.**

Name of Theatre	Corporation	Profit of Corp'n. Re: "Letty Lynton" Showing	Loew's Incorporated Percent Stockholdings	Loew's Incorporated Share Landlord Profit	% Share Profit Allocated to "Letty Lynton"
Willard	Willard Amusement Corporation	729.99	10.7	78.14	52.08
Mt. Vernon	Willard	499.02	10.7	53.40	35.60
Plaza	Conwall Realty Corporation	867.00	10.44	90.51	60.34
		<u>\$2,096.01</u>		<u>\$222.02</u>	<u>\$148.02</u>

2733

2732

2731

## Defendant, Loew's Inc., Exhibit L-9.

OVERHEAD EXPENSE OF THEATRES OPERATED BY CORPORATIONS PARTLY OWNED BY LOEW'S INCORPORATED  
FOR THE FISCAL YEAR ENDED AUGUST 31, 1932

Theatre	Operated by	Rent	Insurance Premiums	Real Estate Taxes and Licenses	Accrued Interest Payable	Investment Interest	Depreciation and Amortization	Sundry Expense	Rent Income
Alpine	Diamond Amusement Corp.		\$ 2,726.17	\$ 8,128.75	\$ 5,940.00	\$ 9,903.00	\$ 14,405.00	\$ 5,543.97	\$ 7,665.00
Burland	Midas Amusement Co.	\$ 27,156.26	2,459.17	250.02	-0-	3,060.00	9,434.00	3,367.18	-0-
Burnside	Walton-Burnside Amuse. Co.	37,500.00	2,211.71	200.02	-0-	2,453.00	11,347.00	5,903.81	-0-
Gates	Gates Theatre Corp.	-0-	3,952.08	16,261.78	16,420.00	18,578.00	38,937.00	2,769.21	7,640.00
Inwood	Dyckwood Amusement Corp.	-0-	2,453.35	8,301.00	12,900.20	7,849.00	19,471.00	209.30	10,224.96
New Rochelle	New Rochelle Consolidated Corp.	74,960.00	1,439.58	-0-	-0-	-0-	-0-	922.69	-0-
Premier	Sutter Amusement Corp.	68,250.00	1,973.05	1,462.37	-0-	2,167.00	5,883.00	792.24	11,196.64
Rio	Chateau Amusement Corp.	50,000.00	2,265.18	200.00	-0-	3,229.00	7,068.18	4,181.68	-0-
Spooner	Evergreen Amusement Corp.	-0-	2,426.49	13,350.02	28,070.25	9,418.00	30,272.00	5,560.88	37,754.07
Victoria	Marloew Amusement Corp.	59,375.04	2,897.60	13,837.00	50.00	4,276.00	8,489.68	947.55	8,600.00
Victory	Hemlock Theatre Corp.	-0-	2,073.99	5,787.27	7,200.00	6,808.00	10,351.26	590.79	720.46
Warwick	Warwick Amusement Corp.	-0-	1,706.35	3,306.00	1,925.00	1,889.00	6,411.00	1,280.53	-0-
Yonkers	Yonkers Operating Corp.	45,000.00	1,514.62	250.00	-0-	3,994.00	2,236.28	1,268.05	-0-
Boston, Orpheum	Loew's Boston Theatres Co.	-0-	4,454.99	52,196.87	34,973.32	36,617.00	89,416.29	488.71	25,200.00
Cleveland, Allen	Loew's Ohio Theatres Inc.	76,495.00	2,523.33	16,791.87	24,954.38	21,421.00	42,292.30	4,218.01	-0-
" Granada	Loew's Ohio Theatres Inc.	17,000.00	1,977.51	14,280.74	15,768.00	31,087.00	35,502.99	1,978.36	19,955.52
" Mail	Loew's Ohio Theatres Inc.	24,999.97	947.36	2,991.95	2,356.20	5,626.00	7,736.20	779.90	-0-
" Park	Loew's Ohio Theatres Inc.	17,150.00	1,653.37	13,112.99	11,781.00	29,970.00	28,950.04	768.01	-0-
Evansville, Victory	Evansville Operating Corp.	87,145.04	1,935.32	19,767.85	-0-	914.00	2,455.60	359.76	-0-
London, Loew's	Loew's London Theatres Ltd.	-0-	1,614.51	11,664.35	-0-	23,618.00	14,169.72	12,957.11	65.00
Toledo, Valentine	Toledo Operating Corp.	25,000.00	504.15	66.49	-0-	-0-	825.00	526.35	-0-
Toronto, Yonge St.	Marcus Loew's Theatres Ltd.	12,000.00	3,538.32	31,176.93	9,003.57	26,723.00	26,884.25	28,639.17	-0-
Washington, Palace	Anchor Theatrical Corp.	6,500.00	2,160.00	16,497.80	13,750.00	24,702.00	41,526.93	382.28	-0-
White Plains, State	Suburban Theatre Corp.	-0-	1,517.93	11,997.93	13,980.00	5,770.95	17,047.84	2,524.82	5,793.37
		\$628,531.31	\$82,926.13	\$261,880.00	\$199,071.92	\$280,072.95	\$471,112.56	\$86,960.36	\$134,815.02

\* 40 Weeks

## Defendant, Loew's Inc., Exhibit L-9.

OVERHEAD EXPENSE OF THEATRES OPERATED BY CORPORATIONS PARTLY OWNED BY LOEW'S INCORPORATED  
FOR THE FISCAL YEAR ENDED AUGUST 31, 1932

Operated by	Rent	Insurance Premiums	Real Estate Taxes and Licenses	Accrued Interest Payable	Investment Interest	Depreciation and Amortization	Sundry Expense	Rent Income	Other Income	Total for Year	Per Week 1/52
ment Corp.		\$ 2,726.17	\$ 8,128.75	\$ 5,940.00	\$ 9,903.00	\$ 14,405.00	\$ 5,543.97	\$ 7,665.00	\$ 1,943.49	\$ 37,038.40	\$ 712.28
nt Co.	\$ 27,156.26	2,459.17	250.02	-0-	3,060.00	9,434.00	3,367.18	-0-	1,669.03	44,057.60	847.26
Amuse. Co.	37,500.00	2,211.71	200.02	-0-	2,453.00	11,347.00	5,903.81	-0-	2,452.45	57,165.09	1,099.29
Corp.	-0-	3,952.08	16,261.78	16,420.00	18,578.00	38,937.00	2,769.21	7,640.00	1,413.09	87,864.98	1,689.71
ment Corp.	-0-	2,453.35	8,301.00	12,900.20	7,849.00	19,471.00	209.30	10,224.96	1,313.10	39,645.79	762.42
nsolidated Corp.	74,960.00	1,439.58	-0-	-0-	-0-	-0-	922.69	-0-	-0-	77,322.27	1,486.97
nt Corp.	68,250.00	1,973.05	1,462.37	-0-	2,167.00	5,883.00	792.24	11,196.64	1,665.79	67,665.23	1,291.63
ment Corp.	50,000.00	2,265.18	200.00	-0-	3,229.00	7,068.18	4,181.68	-0-	1,425.08	65,518.96	1,259.98
ment Corp.	-0-	2,426.49	13,350.02	28,070.25	9,418.00	30,272.00	5,560.88	37,754.07	1,309.64	50,033.93	962.19
ment Corp.	59,375.04	2,897.60	13,837.00	50.00	4,276.00	8,489.68	947.55	8,600.00	4,483.67	76,789.20	1,476.72
Corp.	-0-	2,073.99	5,787.27	7,200.00	6,808.00	10,351.26	590.79	720.46	1,125.00	30,965.85	595.50
ment Corp.	-0-	1,706.35	3,306.00	1,925.00	1,889.00	6,411.00	1,280.53	-0-	354.27	16,163.61	310.84
g Corp.	45,000.00	1,514.62	250.00	-0-	3,994.00	2,236.28	1,268.05	-0-	1,362.24	52,900.71	1,017.32
heatres Co.	-0-	4,454.99	52,196.87	34,973.32	36,617.00	89,416.29	488.71	25,200.00	2,393.76	190,553.42	3,664.49
heatres Inc.	76,495.00	2,523.33	16,791.87	24,954.38	21,421.00	42,292.30	4,218.01	-0-	4,455.70	184,240.19	3,543.08
atres Inc.	17,000.00	1,977.51	14,280.74	15,768.00	31,087.00	35,502.99	1,978.36	19,955.52	2,767.30	94,875.78	1,824.46
atres Inc.	24,999.97	947.36	2,991.95	2,356.20	5,626.00	7,736.20	779.90	-0-	-0-	45,451.38	873.80
atres Inc.	17,150.00	1,653.37	13,112.99	11,781.00	29,970.00	28,950.04	768.01	-0-	-0-	103,385.41	1,988.18
ing Corp.	87,145.04	1,935.32	19,767.85	-0-	914.00	2,455.60	359.76	-0-	364.60	112,212.97	2,157.94
heatres Ltd.	-0-	1,614.51	11,664.35	-0-	23,618.00	14,169.72	12,957.11	65.00	-0-	63,958.69	1,229.97
Corp.	25,000.00	504.15	66.49	-0-	-0-	825.00	526.35	-0-	143.60	26,778.39	514.97
heatres Ltd.	12,000.00	3,538.32	31,176.93	9,003.57	26,723.00	26,884.25	28,639.17	-0-	-0-	137,965.24	2,653.18
l Corp.	6,500.00	2,160.00	16,497.80	13,750.00	24,702.00	41,526.93	382.28	-0-	711.52	104,807.49	2,015.53
Corp.	-0-	1,517.93	11,997.93	13,980.00	5,770.95	17,047.84	2,524.82	5,793.37	-0-	47,046.10	904.73
	\$628,531.31	\$82,926.13	\$261,880.00	\$199,071.92	\$280,072.95	\$471,112.56	\$86,960.36	\$134,815.02	\$31,353.33	\$1,814,386.88	\$35,282.44



# PROFIT OR LOSS OF THEATRES OPERATED BY CORPORATION THROUGH ONE OR MORE INTERMEDIATE CORPORATION

Date (1932)	Name of Theatre	Operated By	Payroll and Trade Bills Entire Year
28-31	Bayridge	Ridgebay Amusement Corporation	\$ 2,491.00
27-29	Canal	Ludlow Operating Corporation	1,466.00
28-30	Embassy—No. Bergen	North Bergen Amusement Corp.	1,383.00
28-30	Grand	Hamford Realty Corporation	2,346.00
5-12	Jersey City	Jersey Boulevard Corporation	6,245.00
4-17	175th St.	Highbridge Realty Corporation	3,031.00
28-31	Oriental	Hawthorne Amusement Corporation	2,158.00
4-16	72nd St.	Wilthan Realty Corporation	2,809.00
3-19	Paradise	Concourse Realty Corporation	7,445.00
29-5/5	State—Providence	Providence Theatrical Corporation	2,558.00
5-12	State—Syracuse	Salina-Jefferson Corporation	2,833.00
27-6/2	Parkway—Baltimore	Century-Parkway Corporation	1,019.00
5-12	Columbus-Broad	Loew-U. A. Columbus Corporation	1,766.00
29-5/5	State—Louisville	Louisville Operating Company, Inc.	1,871.00
27-6/2	Valencia—Baltimore	Baltimore Consolidated Corp.	1,201.00
3-19	Stanley—Baltimore	Baltimore Consolidated Corp.	2,430.00
29-5/5	State—Boston	State Theatre Company	2,692.00
27-5/9-12	State—Norfolk	Norfolk Consolidated Corporation	1,481.00
5-7	Loew's—Richmond	Richmond Consolidated Corporation	1,447.00
3-16	Loew's—Canton	Loew's Theatre & Realty Corporation	1,660.00
20-26	Penn.—Pittsburgh	Penn-Federal Corporation	5,576.00
	<b>TOTALS</b>		<b>\$55,916.00</b>

Words and figures in italics appeared red in original.



# **Defendant, Loew's Inc., Exhibit L-10.**

**CTIONS IN WHICH SAID CORPORATION, LOEW'S INC. HAVE IN DIRI  
S DURING PERIODS IN WHICH LETTY LYNTON (TOGETHER WITH**

		Box Office re- ceipts of period in which Letty Lynton (together with other attrac- tions) was exhibited	Percentage of weeks receipts received during period in which Letty Lynton (together with other attrac- tions) was ex- hibited	Payroll and Trade bills ap- plicable to period in which Letty Lynton (together with other attrac- tions) was exhibited	Overhead applicable to period in which Letty Lynton (together with other attrac- tions) was exhibited	
and for ek	Overhead for Entire Week					Letty
00	\$ 1,457.85	\$ 5,554.25	83.3	\$ 2,075.00	\$ 1,214.39.	\$
01	1,640.64	2,039.15	58.3	854.68	956.49	
03	856.76	3,446.95	72.8	1,006.85	623.72	
12	2,246.04	5,678.20	71.5	1,677.48	1,605.92	
25	4,622.87	21,318.90	100.	6,245.25	4,629.87	1
32	4,802.93	8,334.45	78.4	2,376.79	3,765.50	1
26	1,987.72	5,732.00	74.8	1,614.38	1,486.81	1
56	3,547.66	4,818.30	56.8	1,595.83	1,998.03	
35	5,143.80	17,999.60	100	7,445.35	5,143.80	2
32	4,806.47	12,407.20	100	2,558.32	4,806.47	2
55	4,999.53	12,171.15	100	2,833.55	4,999.53	1
77	537.27	4,482.15	100	1,019.77	537.27	
11	3,519.04	9,133.10	100	1,766.11	3,519.04	2
22	2,839.96	8,381.70	100	1,871.22	2,839.96	2
47	2,135.09	2,583.30	100	1,201.47	2,135.09	60
86	2,970.73	14,054.95	100	2,430.86	2,970.73	5
74	4,040.66	13,564.50	100	2,692.74	4,040.66	3
00	1,713.62	5,938.25	100	1,481.90	1,713.62	1
59	1,387.16	8,742.65	100	1,447.59	1,387.16	2
16	1,854.03	2,539.45	79.8	1,324.81	1,479.52	
57	8,370.36	16,412.05	100	5,576.67	8,370.36	
56	<u>\$65,457.19</u>	<u>\$185,332.25</u>		<u>\$51,096.62</u>	<u>\$60,223.94</u>	<u>\$31</u>

NS IN WHICH SAID CORPORATION, LOEW'S INC. HAVE IN DIR  
DURING PERIODS IN WHICH LETTY LYNTON (TOGETHER WIT

Overhead for Entire Week	Box office receipts of period in which Letty Lynton (together with other at- tractions) was exhibited	Percentage of weeks receipts received during period in which Letty Lynton (together with other attrac- tions) was ex- hibited	Payroll and Trade bills ap- plicable to period in which Letty Lynton (together with other at- tractions) was exhibited	Overhead applicable to period in which Letty Lynton (together with other attrac- tions) was exhibited	
\$ 1,457.85	\$ 5,554.25	83.3	\$ 2,075.00	\$ 1,214.39	\$
1,640.64	2,039.15	58.3	854.68	956.49	
856.76	3,446.95	72.8	1,006.85	623.72	
2,246.04	5,678.20	71.5	1,677.48	1,605.92	
4,622.87	21,318.90	100	6,245.25	4,629.87	
4,802.93	8,334.45	78.4	2,376.79	3,765.50	
1,987.72	5,732.00	74.8	1,614.38	1,486.81	
3,517.66	4,818.30	56.8	1,595.83	1,998.03	
5,143.80	17,999.60	100	7,445.35	5,143.80	
4,806.47	12,407.20	100	2,558.32	4,806.47	
4,999.53	12,171.15	100	2,833.55	4,999.53	
537.27	4,482.15	100	1,019.77	537.27	
3,519.04	9,133.40	100	1,766.11	3,519.04	
2,839.96	8,381.70	100	1,871.22	2,839.96	
2,135.09	2,583.30	100	1,201.47	2,135.09	
2,970.73	14,054.95	100	2,430.86	2,970.73	
4,040.66	13,564.50	100	2,692.74	4,040.66	
1,713.62	5,938.25	100	1,481.90	1,713.62	
1,387.16	8,742.65	100	1,447.59	1,387.16	
1,854.03	2,539.45	79.8	1,324.81	1,479.52	
8,370.36	16,412.05	100	5,576.67	8,370.36	
<hr/>	<hr/>		<hr/>	<hr/>	
\$65,457.19	\$185,332.25		\$51,096.62	\$60,223.94	\$3

# ECT STOCK INTEREST WHOLE OR IN PART H OTHER ATTRACTIONS) WAS EXHIBITED

Cost of feature by Lynton	Cost of other attractions during period in which Letty Lynton was exhibited	Profit or Loss applicable to period in which Letty Lynton (together with other attrac- tions) was exhibited	Loew's Inc. Percentage of Interest	Amount of Loew's Inc. Profit or Loss during period in which Letty Lynton (together with other attrac- tions) was exhibited	% share profit or allocated Letty Lynton
800.00	\$ 1,038.61	\$ 426.25	50	\$ 213.13	\$ 142
375.00	86.50	233.52	100	233.52	155
689.39	120.75	1,096.24	50	503.12	335
600.00	110.75	1,684.05	100	1,684.05	1,122
1,500.00	2,874.65	6,069.13	100	6,069.13	4,046
1,200.00	136.75	855.41	100	855.41	570
1,000.00	146.75	1,484.06	66.67	989.42	659
750.00	148.50	325.94	100	325.94	217
2,000.00	4,478.47	1,068.02	100	1,068.02	712
2,500.00	221.25	2,321.16	100	2,321.16	1,547
1,400.00	3,728.56	790.49	100	790.49	527
868.75	110.10	1,946.26	50	973.13	648
2,629.08	267.62	951.25	50	475.63	317
2,241.62	219.16	1,209.74	50	604.87	403
387.49	105.10	1,245.85	30	373.76	249
5483.08	317.60	2,852.68	0	855.80	570
3,500.00	321.33	3,009.77	50	1,504.89	1,003
1,484.57	210.50	1,047.66	33.33	349.19	232
2,371.37	267.60	3,268.93	33.33	1,089.53	726
—	120.12	385.00	100	385.00	258
—	3,768.12	1,303.10	44.12	574.93	383
1,780.35	\$18,798.79	\$23,432.55		\$15,388.68	\$10,259

## Defendant, Loew's Inc., Exhibit L-11.

## OVERHEAD EXPENSE OF THEATRES OPERATED BY CORPORATIONS IN WHICH SAID CORPORATION LOEW'S INC. HAS AN INDIRECT STOCK INTEREST WHOLE OR IN PART THROUGH ONE OR MORE INTERMEDIATE CORPORATIONS

Theatre	Operated by	Rent	Insurance	Real Estate Taxes and Licenses	Accrued Interest Payable	Investment Interest	Depreciation and Amortization	Sundry Expense	Rent Income
Bay Ridge	Ridge Bay Amusement Corp.	-0-	\$ 2,647.68	\$ 7,307.39	\$ 21,242.13	\$ 13,541.00	\$ 34,687.00	\$ 282.60	\$ 3,665.00
Canal	Ludlow Operating Corporation	-0-	2,826.34	17,280.00	173.66	41,176.00	25,086.81	213.79	-0-
Embassy—No. Bergen	North Bergen Amusement Corp.	\$ 27,000.00	1,951.47	11,886.77	204.10	1,298.00	2,596.87	713.47	-0-
Grand	Hamford Realty Corporation	-0-	4,320.23	33,075.04	44,960.26	26,304.00	47,951.65	809.95	40,626.63
Jersey City	Jersey Boulevard Corporation	-0-	3,689.72	37,956.66	18,476.79	118,276.00	69,925.00	-	7,570.83
175th Street	Highbridge Realty Corporation	-0-	4,372.25	39,020.02	1,103.12	150,008.00	70,225.00	434.78	15,224.99
Oriental	Hawthorne Amusement Corp.	-0-	3,647.97	16,637.75	36,004.57	25,825.00	38,305.81	456.02	17,225.00
72nd Street	Wiltham Realty Corporation	7,812.50	1,341.28	9,213.19	38,617.41	25,522.50	19,469.80	81.72	2,925.00
Paradise	Concourse Realty Corporation	-0-	5,386.59	43,885.10	15,223.54	175,609.00	72,648.00	3,362.63	48,637.11
State—Providence	Providence Theatrical Corp.	50,000.00	2,792.90	38,757.35	111.25	108,716.00	71,785.30	4,626.19	21,656.52
State—Syracuse	Salina-Jefferson Corporation	-0-	4,916.66	71,943.86	58.13	195,149.00	95,993.10	54,021.54	143,376.02
Parkway—Balti.	Century-Parkway Corporation	200.00	1,150.73	3,354.86	11,027.29	-0-	12,168.31	37.10	-0-
Broad—Columbus	Loew-U. A. Columbus Corp.	62,026.07	3,353.23	13,871.41	-0-	39,597.00	66,639.00	15,241.70	17,058.44
State—Louisville	Louisville Operating Co. Inc.	91,289.92	2,479.15	23,207.61	-0-	13,344.00	17,458.00	349.21	-0-
Valencia—Balti.	Baltimore-Canal Corporation	108,160.00	876.72	48.40	-0-	281.00	1,659.00	-0-	-0-
Stanley—Balti.	Baltimore-Canal Corporation	150,000.00	1,198.22	68.96	-0-	1,123.00	3,546.00	2.00	-0-
State—Boston	State Theatre Company	-0-	6,221.44	52,133.40	75,145.58	22,104.00	106,021.16	31,185.89	58,069.90
State—Norfolk	Norfolk Consolidated Corp.	93,886.40	2,222.89	13,431.97	-0-	-0-	3,378.93	-0-	23,812.00
Loew's—Richmond	Richmond Consolidated Corp.	71,383.68	1,657.65	14,194.32	-0-	-0-	3,869.46	1,249.87	20,222.83
Loew's—Canton	Loew's Thea. & Realty Corp.	25,500.00	1,781.84	9,049.48	-0-	30,681.00	32,204.32	1,441.84	4,187.50
Penn—Pittsburgh	Penn-Federal Corporation	111,500.00	4,260.62	121,908.90	54,809.83	115,318.00	100,433.00	2,895.46	69,322.47
TOTALS		\$798,758.57	\$63,095.58	\$578,232.44	\$317,157.66	\$1,103,872.50	\$896,051.52	\$117,405.76	\$493,580.13

\* 28 Weeks



## Defendant, Loew's Inc., Exhibit L-11.

PENSE OF THEATRES OPERATED BY CORPORATIONS IN WHICH SAID CORPORATION LOEW'S INC. HAVE STOCK INTEREST WHOLE OR IN PART THROUGH ONE OR MORE INTERMEDIATE CORPORATIONS

Rent	Insurance	Real Estate Taxes and Licenses	Accrued Interest Payable	Investment Interest	Deprecia- tion and Amortization	Sundry Expense	Rent Income	Other Income	Total for Year	Per Week 1/52
-0-	\$ 2,647.68	\$ 7,307.39	\$ 21,242.13	\$ 13,541.00	\$ 34,687.00	\$ 282.60	\$ 3,665.00	\$ 234.10	\$ 75,808.70	\$ 1,457.85
-0-	2,826.34	17,280.00	173.66	41,176.00	25,086.81	213.79	-0-	1,443.34	85,313.26	1,640.64
\$ 27,000.00	1,951.47	11,886.77	204.10	1,298.00	2,596.87	713.47	-0-	1,099.22	44,551.46	856.76
-0-	4,320.23	33,075.04	44,960.26	26,304.00	47,951.65	809.95	40,626.65	-0-	116,794.48	2,246.04
-0-	3,689.72	37,956.66	18,476.79	118,276.00	69,925.00	-	7,570.88	-0-	240,753.29	4,629.87
-0-	4,372.25	39,020.02	1,103.12	150,008.00	70,225.00	434.78	15,224.99	186.13	249,792.05	4,802.93
-0-	3,647.97	16,637.75	36,004.57	25,825.00	38,305.81	456.02	17,225.00	290.53	103,361.59	1,987.72
7,812.50	1,341.28	9,213.19	38,617.41	25,522.50	19,469.80	81.72	2,925.00	638.90	98,494.50	3,517.66
-0-	5,386.59	43,885.10	15,223.54	175,609.00	72,648.00	3,362.63	48,637.11	-0-	267,477.75	5,143.80
50,000.00	2,792.90	38,757.35	111.25	108,716.00	71,785.30	4,626.19	21,656.52	5,195.75	249,936.72	4,806.47
-0-	4,916.66	71,943.86	58.13	195,149.00	95,993.10	54,021.54	143,376.02	18,730.55	259,975.72	4,999.53
200.00	1,150.73	3,354.86	11,027.29	-0-	12,168.31	37.10	-0-	-0-	27,938.29	537.27
62,026.07	3,353.23	13,871.41	-0-	39,597.00	66,639.00	15,241.70	17,058.16	680.02	182,990.23	3,519.04
91,289.92	2,479.15	23,207.61	-0-	13,344.00	17,458.00	349.21	-0-	449.77	147,678.12	2,839.96
108,160.00	876.72	48.40	-0-	281.00	1,659.00	-0-	-0-	-0-	111,025.12	2,135.09
150,000.00	1,198.22	68.96	-0-	1,123.00	3,546.00	2.00	-0-	1,460.00	154,478.18	2,970.73
-0-	6,221.44	52,133.40	75,145.58	22,104.00	106,021.16	31,185.89	58,069.94	24,627.25	210,114.28	4,040.66
93,886.40	2,222.89	13,431.97	-0-	-0-	3,378.93	-0-	23,812.08	-0-	89,108.11	1,713.62
71,383.68	1,657.65	14,194.32	-0-	-0-	3,869.46	1,249.87	20,222.83	-0-	72,132.15	1,387.16
25,500.00	1,781.84	9,049.48	-0-	30,681.00	32,204.32	1,441.84	4,187.50	61.35	96,409.63	1,854.03
111,500.00	4,250.62	121,908.90	54,809.83	115,318.00	100,433.00	2,895.46	69,322.47	6,545.03	435,258.31	8,370.36
<u>\$798,758.57</u>	<u>\$63,095.58</u>	<u>\$78,232.44</u>	<u>\$317,157.66</u>	<u>\$1,103,872.50</u>	<u>\$896,051.52</u>	<u>\$117,405.76</u>	<u>\$493,580.15</u>	<u>\$61,641.94</u>	<u>\$3,319,351.94</u>	<u>\$65,457.19</u>

## Defendant, Loew's Inc., Exhibit L-12.

PROFIT OR LOSS OF THEATRES DURING PERIOD IN WHICH "LETTY LYNTON" (TOGETHER WITH OTHER AT THESE THEATRES WERE NOT AND ARE NOT NOW OWNED OR LEASED BY THE DEFENDANT LOEW'S INC. OR ANY AFFILIATE OR SUBSIDIARY OF LOEW'S INC. OR OF ANY OF THE OTHER DEFENDANTS HEREIN, BUT THE MARCUS LOEW BOOKING AGENCY UNDER WRITTEN MANAGEMENT AGREEMENTS WITH THE OWNERS OF

Play Date (1932)	Name of Theatre	Managed By	Payroll and Trade Bills for Entire Week	Overhead for Entire Week	Box Office Re- ceipts of Period in which Letty Lynton (together with other at- tractions) was exhibited	Percentage of weeks receipts received during period in which Letty Lynton (together with other attrac- tions) was ex- hibited	Payroll and Trade bills ap- plicable to period in which Letty Lynton (together with other at- tractions) was exhibited	Overhead applicable to period in which Letty Lynton (together with other attrac- tions) was exhibited	Cost of Feature Letty Lynton
5/28-30	Broadway	Marcus Loew Booking Agency	\$ 1,563.45	\$ 594.33	\$ 3,344.15	57.2	\$ 894.29	\$ 339.96	\$ 600.00
6/11-13	Freeman	Marcus Loew Booking Agency	1,178.03	631.26	1,722.10	52.3	616.11	330.15	300.00
6/4-7	Mt. Vernon	Marcus Loew Booking Agency	1,712.31	1,077.62	3,661.15	70.5	1,207.18	759.72	800.00
5/28-31	Plaza	Marcus Loew Booking Agency	1,607.06	1,080.62	4,087.05	68.	1,092.80	734.82	800.00
5/28-30	Prospect	Marcus Loew Booking Agency	1,705.82	1,229.68	3,966.30	75.4	1,236.19	927.18	675.00
5/21-23	Sheriden	Marcus Loew Booking Agency	1,706.67	1,521.84	4,923.45	66.8	1,140.06	1,016.59	750.00
5/28-30	Willard	Marcus Loew Booking Agency	1,684.98	852.06	3,722.35	72	1,213.19	613.48	675.00
4/30-5/2-6	Fox—Atlanta	Marcus Loew Booking Agency	3,997.63	2,200.57	10,092.25	100.	3,997.63	2,200.57	523.06
			<u>\$15,155.95</u>	<u>\$9,187.98</u>	<u>\$35,518.80</u>		<u>\$11,447.45</u>	<u>\$6,922.47</u>	<u>\$5,123.06</u>

Words in italics appeared red in original.

## Defendant, Loew's Inc., Exhibit L-12.

THEATRES DURING PERIOD IN WHICH "LETTY LYNTON" (TOGETHER WITH OTHER ATTRACTIONS) WAS EXHIBITED. NOT AND ARE NOT NOW OWNED OR LEASED BY THE DEFENDANT LOEW'S INC. OR ANY OTHER DEFENDANT OR BY A SUBSIDIARY OF LOEW'S INC. OR OF ANY OF THE OTHER DEFENDANTS HEREIN, BUT WERE MERELY MANAGED BY A MANAGING AGENCY UNDER WRITTEN MANAGEMENT AGREEMENTS WITH THE OWNERS OF SAID THEATRES

	Payroll and Trade Bills for Entire Week	Overhead for Entire Week	Box Office Re- ceipts of Period in which Letty Lynton (together with other attrac- tions) was ex- hibited	Percentage of weeks receipts received during period in which Letty Lynton (together with other attrac- tions) was ex- hibited	Payroll and Trade bills ap- plicable to period in which Letty Lynton (together with other attrac- tions) was ex- hibited	Overhead applicable to period in which Letty Lynton (together with other attrac- tions) was ex- hibited	Cost of Feature Letty Lynton	Cost of other attractions during period in which Letty Lynton was exhibited	Profit or Loss applicable to period in which Letty Lynton (together with other attrac- tions) was exhibited	Compensation of Marcus Loew Booking Agency based upon the following percentage of profit	Amount of Profit or Loss during period in which Letty Lynton (together with other attrac- tions) was exhibited	% share Profit or Loss allocated Letty Lynton
CY	\$ 1,563.45	\$ 594.33	\$ 3,344.15	57.2	\$ 894.29	\$ 339.96	\$ 600.00	\$ 95.75	\$1,414.15	50	\$ 707.08	\$ 471.41
CY	1,178.03	631.26	1,722.10	52.3	616.11	330.15	300.00	82.00	303.84	50	196.92	131.29
CY	1,712.31	1,077.62	3,661.15	70.5	1,207.18	759.72	800.00	145.75	748.50	33.33	249.48	166.33
CY	1,607.06	1,080.62	4,087.05	68.	1,092.80	734.82	800.00	159.00	1,300.43	33.33	433.43	288.97
CY	1,705.82	1,229.68	3,966.30	75.4	1,286.19	927.18	675.00	125.75	952.48	33.33	317.36	211.58
CY	1,706.67	1,521.84	4,923.45	66.8	1,140.06	1,016.59	750.00	110.75	1,906.05	50	953.03	635.39
CY	1,684.98	852.06	3,722.35	72.	1,213.19	613.48	675.00	125.75	1,094.93	33.33	364.94	243.31
CY	3,997.63	2,200.57	10,092.25	100.	3,997.63	2,200.57	523.06	3,300.40	70.59	50	35.30	23.53
	<u>\$15,155.95</u>	<u>\$9,187.98</u>	<u>\$35,518.80</u>		<u>\$11,447.45</u>	<u>\$6,922.47</u>	<u>\$5,123.06</u>	<u>\$4,145.15</u>	<u>\$7,880.67</u>		<u>\$3,257.54</u>	<u>\$2,171.81</u>



## Defendant, Loew's Inc., Exhibit L-13.

OVERHEAD EXPENSE OF THEATRES, WHICH WERE NOT AND ARE NOT NOW OWNED OR LEASED BY THE DEFENDANT, LOEW'S INC. OR AN AFFILIATE OR SUBSIDIARY OF LOEW'S INC. OR OF ANY OF THE OTHER DEFENDANTS HEREIN, BUT WERE MERELY MANAGED BY MARCUS LOEW BOOKING AGENCY UNDER WRITTEN MANAGEMENT AGREEMENTS WITH THE OWNERS OF SAID THEATRES FOR THE FISCAL YEAR ENDING AUGUST 31st, 1932

Theatre	Managed By	Rent	Insurance	Real Estate Taxes and Licenses	Accrued Interest Payable	Investment Interest	Depreciation and Amortization	Sundry Expense	Rent Income
Broadway	Marcus Loew Booking Agency	\$ 30,000.00	\$ 1,929.03	\$ 200.00				\$ 276.20	
Freeman	Marcus Loew Booking Agency	32,500.00	131.52	200.00				73.50	
Mt. Vernon	Marcus Loew Booking Agency	52,800.00	1,173.20					3,415.26	
Plaza	Marcus Loew Booking Agency	53,000.00	1,871.94	200.00				2,161.57	
Prospect	Marcus Loew Booking Agency	63,600.00	1,971.74	200.00				1,253.41	1,349.99
Sheriden	Marcus Loew Booking Agency	65,000.00	2,752.23	13,906.25				674.66	2,475.00
Willard	Marcus Loew Booking Agency	42,200.00	2,085.36	200.00				1,102.75	
Fox Atlanta	Marcus Loew Booking Agency	92,855.00	762.63	1,002.96				4.00	
		<u>\$431,955.00</u>	<u>\$12,677.65</u>	<u>\$15,909.21</u>				<u>\$8,961.35</u>	<u>\$3,824.99</u>

• 43 Weeks

## Defendant, Loew's Inc., Exhibit L-13.

ES, WHICH WERE NOT AND ARE NOT NOW OWNED OR LEASED BY THE DEFENDANT, LOEW'S INC. OR ANY OTHER DEFENDANT OR BY ANY AFFILIATE OR SUBSIDIARY OF LOEW'S INC. OR OF ANY OF THE OTHER DEFENDANTS HEREIN, BUT WERE MERELY MANAGED BY MARCUS LOEW BOOKING AGENCY UNDER WRITTEN MANAGEMENT AGREEMENTS WITH THE OWNERS OF SAID THEATRES FOR THE FISCAL YEAR ENDING AUGUST 31st, 1932

Managed By	Rent	Insurance	Real Estate Taxes and Licenses	Accrued Interest Payable	Investment Interest	Depreciation and Amortization	Sundry Expense	Rent Income	Other Income	Total for Year	Per Week 1/52
king Agency	\$ 30,000.00	\$ 1,929.03	\$ 200.00				\$ 276.20		\$1,500.03	\$ 30,905.20	\$ 594.33
king Agency	32,500.00	131.52	200.00				73.50		79.17	32,825.85	631.26
king Agency	52,800.00	1,173.20					3,415.26		1,351.83	56,036.63	1,077.62
king Agency	53,000.00	1,871.94	200.00				2,161.57		1,041.27	56,192.24	1,080.62
king Agency	63,600.00	1,971.74	200.00				1,253.41	1,349.99	1,731.50	63,943.66	1,229.68
king Agency	65,000.00	2,752.23	13,906.25				674.66	2,475.00	722.37	79,135.77	1,521.84
king Agency	42,200.00	2,085.36	200.00				1,102.75		1,280.96	44,307.15	852.06
king Agency	92,855.00	762.63	1,002.96				4.00			94,624.59	2,200.57*
	<u>\$431,955.00</u>	<u>\$12,677.65</u>	<u>\$15,909.21</u>				<u>\$8,961.35</u>	<u>\$3,824.99</u>	<u>\$7,707.13</u>	<u>\$457,971.09</u>	<u>\$9,187.98</u>



Payroll (Check No. 11748)	No. of Empl.	Trade Bills	Check No. 11747	Films and Acts
Bus. Manager	110.	Newspapers	13.07	<b>FILMS</b>
Asst. Bus. Manager	35.	Other Advertising	6.25	May 28-31
		Lobby Stills Photos		
Treasurer		Display Cut Outs	8.42	
Asst. Treasurer		Posters—Lith.—Cards	44.01	Letty Lynton—M. G. M.
Cashiers	18.	Trailers	15.42	Joan Crawford
Doormen	25.	Loew's W'kly & Add.	50.63	
Special Officers	25.	" " Postage	25.01	Down Memory Lane—Col.
Ushers	5	Sign Shop	30.	Metrotone News #270
Matron	2	Bill Posting		
Pages				June 1-3
Watchman	23.	Maintenance—Repairs	95.44	
		Booth Supplies		Sky Bride—Para
Superintendent		Cleaners Supplies	22.39	Richard Arlen
Cleaners	3	Office Supplies		War Mamas—M. G. M.
Porters	2	Elec. Supplies		Should 18th Amendment—Col.
Engineer		Cooling Plant Supplies		Be Repealed—Col.
Fireman		" " Gas		Metrotone News #271
		" " Water		Sound Tr. Letty Lynton
Stage Manager		" Elec. Power		
Electrician	70.	Carbons		<b>ACTS</b>
Asst. Electrician	62.	Coal—Steam		May 28-31
Property Man	70.	Electric Light & Power	150.	
Carpenter	73.	Fire Alarm Service	6.29	Taketa Bros. & Sis.
Clearers		Lamps		Renard & Ryan
Flymen		Music Scores	15.	Geo. Fawcett & Co.
Operators	5	Organ Maintenance		Mel Klee
Stage Doorman	18.	Piano Rental	36.	Jean Schwartz—Joie Ray
Reel Boys	3.	Telephone & Telegraph		M. L. B. A. Comm.
		Tickets		
Orchestra	553.	Ice, Cups and Filter Service		June 1-3
		Booking Office	100.	
Bill Poster	40.	Detective Service		5 Arleys
Publicity Man		Express	7.75	Smith, Rogers & Eddy
		Film Delivery	7.50	Belle Blanche
Overtime		Production Exp.		Flynn & Mack
		Traveling Exp.		Babe Egan & Red Heads
		Relief Mgr.		M. L. B. A. Comm.
Late Show	17.76	V. M. P. A. Dues		
		"Sound" Service Fee	20.	657.58
				1418.75
				2076.33
		Miscel. Expense	11748	29.41
			4.40	2046.92
Total	\$1647.47	Total	\$657.58	

Check  
No. 11747

Th  
C  
W

Trade Bills

Check  
No. 11747

Films and Acts

FILMS

800.

Weather

Clear—Warm

18.

Cldy—Cool

30.

Clear—Warm

" "

450.

" "

60.

" Very "

18.

Cldy "

40.

Clear—Warm

2.75

" "

1418.75

Late Show

11736

122.14

Salary Refund—V.  
Napkin Dep.

37

38.

38

244.28

39

217.14

40

190.

Expense

46

42.72

Pay Roll

Trade Bills

Films & Acts

854.28

Check No. 11749

41

142.50

42

47.50

These Lines to be  
By Mana

43

71.25

44

71.25

45

244.28

46

30.36

R

607.14

Last Year—L

Ex

1461.42

Deficit

Newspapers

Other Advertising

Lobby Stills Photos

Display Cut Outs

Posters—Lith.—Cards

Trailers

Loew's W'kly & Add.

" " Postage

Sign Shop

Bill Posting

Maintenance—Repairs

Booth Supplies

Cleaners Supplies

Office Supplies

Elec. Supplies

Cooling Plant Supplies

" " Gas

" " Water

" Elec. Power

Carbons

Coal—Steam

Electric Light & Power

Fire Alarm Service

Lamps

Music Scores

Organ Maintenance

Piano Rental

Telephone & Telegraph

Tickets

Ice, Cups and Filter Service

Booking Office

Detective Service

Express

Film Delivery

Production Exp.

Traveling Exp.

Relief Mgr.

V. M. P. A. Dues

"Sound" Service Fee

Miscel. Expense

13.07

6.25

May 28-31

8.42

44.01

Letty Lynton—M. G. M.

15.42

Joan Crawford

50.63

25.01

Down Memory Lane—Col.

30.

Metrotone News #270

June 1-3

95.44

Sky Bride—Para

Richard Arlen

22.39

War Mamas—M. G. M.

Should 18th Amendment—Col.

Be Repealed—Col.

Metrotone News #271

Sound Tr. Letty Lynton

ACTS

May 28-31

150.

6.29

Taketa Bros. & Sis.

Renard & Ryan.

15.

Geo. Fawcett & Co.

Mel Klee

36.

Jean Schwartz—Joie Ray

M. L. B. A. Comm.

June 1-3

100.

5 Arleys

Smith, Rogers & Eddy

7.75

Belle Blanche

7.50

Flynn & Mack

Babe Egan & Red Heads

M. L. B. A. Comm.

20.

657.58

1418.75

2076.33

29.41

2046.92

11748

4.40

Total

\$657.58

17.

Total

\$2880.17



No. 11747										No. 4738										No. 4738										No. 4738									
Theatre BOULEVARD										Theatre ORPHEUM, N. Y.										Theatre ORPHEUM, N. Y.										Theatre ORPHEUM, N. Y.									
City New York										City New York										City New York										City New York									
Week Ending June 3, 1932										Week Ending May 27, 1932										Week Ending May 27, 1932										Week Ending May 27, 1932									
RECEIPTS										RECEIPTS										RECEIPTS										RECEIPTS									
S80.	Weather	Date	Total For the Day							S80.	Weather	Date	Total For the Day							S80.	Weather	Date	Total For the Day																
18.	Clear—Warm	Sat. Mat. 5/28	49.60							18.	Clear—Warm	Sat. Mat. 5/28	49.60							18.	Clear—Warm	Sat. Mat. 5/28	49.60																
30.	" " " Eve.	" " " Eve.	817.10							30.	" " " Eve.	" " " Eve.	817.10							30.	" " " Eve.	" " " Eve.	817.10																
30.	Cldy—Cool	Sun. Mat. 29	573.20							30.	Cldy—Cool	Sun. Mat. 29	573.20							30.	Cldy—Cool	Sun. Mat. 29	573.20																
	" " " Eve.	" " " Eve.	1129.10								" " " Eve.	" " " Eve.	1129.10								" " " Eve.	" " " Eve.	1129.10																
	Clear—Warm	Mon. Mat. 30	276.60								Clear—Warm	Mon. Mat. 30	276.60								Clear—Warm	Mon. Mat. 30	276.60																
	" " " Eve.	" " " Eve.	681.90								" " " Eve.	" " " Eve.	681.90								" " " Eve.	" " " Eve.	681.90																
450.	" " " Tues. Mat. 31	" " " Tues. Mat. 31	329.20							450.	" " " Tues. Mat. 31	" " " Tues. Mat. 31	329.20							450.	" " " Tues. Mat. 31	" " " Tues. Mat. 31	329.20																
	" " " Eve.	" " " Eve.	264.50								" " " Eve.	" " " Eve.	264.50								" " " Eve.	" " " Eve.	264.50																
60.	" Very " Wed. Mat. 6/1	" " " Wed. Mat. 6/1	177.10							60.	" Very " Wed. Mat. 6/1	" " " Wed. Mat. 6/1	177.10							60.	" Very " Wed. Mat. 6/1	" " " Wed. Mat. 6/1	177.10																
18.	" " " Eve.	" " " Eve.	236.50							18.	" " " Eve.	" " " Eve.	236.50							18.	" " " Eve.	" " " Eve.	236.50																
40.	Cldy " " Thur. Mat. 2	" " " Thur. Mat. 2	198.50							40.	Cldy " " Thur. Mat. 2	" " " Thur. Mat. 2	198.50							40.	Cldy " " Thur. Mat. 2	" " " Thur. Mat. 2	198.50																
	" " " Eve.	" " " Eve.	197.10								" " " Eve.	" " " Eve.	197.10								" " " Eve.	" " " Eve.	197.10																
2.75	Clear—Warm	Fri. Mat. 3	167.60							2.75	Clear—Warm	Fri. Mat. 3	167.60							2.75	Clear—Warm	Fri. Mat. 3	167.60																
	" " " Eve.	" " " Eve.	193.40								" " " Eve.	" " " Eve.	193.40								" " " Eve.	" " " Eve.	193.40																
1418.75										1418.75										1418.75																			
	Late Show		\$5691.40								Late Show		\$5691.40								Late Show		\$5691.40																
			194.90										194.90										194.90																
11736	Salary Refund—W. E. 5/27		5/31 14.73							11736	Salary Refund—W. E. 5/27		5/31 14.73							11736	Salary Refund—W. E. 5/27		5/31 14.73																
37	Napkin Dep.		6/1 4.—							37	Napkin Dep.		6/1 4.—							37	Napkin Dep.		6/1 4.—																
38										38										38																			
39										39										39																			
40	Expense									40	Expense									40	Expense																		
46	Pay Roll		\$1647.47							46	Pay Roll		\$1647.47							46	Pay Roll		\$1647.47																
	Trade Bills		\$ 657.58								Trade Bills		\$ 657.58								Trade Bills		\$ 657.58																
	Films & Acts		\$2880.17								Films & Acts		\$2880.17								Films & Acts		\$2880.17																
854.28			5185.22							854.28			5185.22							854.28			5185.22																
	Check No. 11749 Balance		719.81								Check No. 11749 Balance		719.81								Check No. 11749 Balance		719.81																
41										41										41																			
42	These Lines to be Left Blank		Overhead 840.							42	These Lines to be Left Blank		Overhead 840.							42	These Lines to be Left Blank		Overhead 840.																
43	By Manager		Profit Loss 120.19							43	By Manager		Profit Loss 120.19							43	By Manager		Profit Loss 120.19																
44										44										44																			
45										45										45																			
46										46										46																			
	REMARKS & OPPOSITION										REMARKS & OPPOSITION										REMARKS & OPPOSITION																		
			673.59										673.59										673.59																
607.14			46.22							607.14			46.22							607.14			46.22																
	Last Year—Recpts		4767.03								Last Year—Recpts		4767.03								Last Year—Recpts		4767.03																
	Exp.		5263.41								Exp.		5263.41								Exp.		5263.41																
1461.42										1461.42										1461.42																			
	Deficit		496.38								Deficit		496.38								Deficit		496.38																
Total			\$2880.17							Total			\$2880.17							Total			\$2880.17																
	A. BERNSTEIN										A. BERNSTEIN										A. BERNSTEIN																		
	Bus. Manager										Bus. Manager										Bus. Manager																		



**Complainants' Exhibit B-13.**

Payroll (Check Nos. 7850, 7860)		No. of Empl.	Trade Bills	Check No. 7858	Films and Acts	Check No. 7858		
Bus. Manager	1	95.00	Newspapers	594.92				
Asst. Bus. Manager	1	45.00	Other Advertising		Metro-Goldwyn-Mayer			
			Lobby Stills Photos					
Treasurer			Display Cut Outs	64.52	Letty Lynton	3000.00		
Asst. Treasurer			Posters—Lith.—Cards	7.82	News 264	40.00		
Cashiers	2	35.00	Trailers	1.66	News 265	30.00	Weather	
Doormen	1	26.00	Loew's Wkly & Add.	47.50	London—City of Tradition	42.00	Clear Cool	
Special Officers	1	20.00	“ “ Postage	49.36	Nanny	35.00	Clear Cool	
Ushers	8	100.00	Sign Shop				Clear Cool	
Matron	1	13.00	Bill Postings	75.00	National Screen		Clear Cool	
Pages					Trailer—Letty Lynton	20.00	Clear Cool	
Watchman	1	21.00	Maintenance—Repairs	96.00			Clear Cool	
			Booth Supplies	68.00	Metro-Goldwyn-Mayer		Clear Cold	
Superintendent	1	24.00	Cleaners Supplies		Tennis—Technique 10/31	10.50	Clear Cold	
Cleaners	4	51.00	Office Supplies	7.53	Forehand, Backhand 11/7	10.50	Clear Cold	
Porters	3	60.00	Elec. Supplies	2.89	Volley & Smash 11/14	10.50	Clear Cold	
Engineer	1	55.00	Cooling Plant Supplies	23.15	Land of Maharajah 10/24	10.50	Clear Cold	
Fireman	1	50.00	“ “ Gas				Clear Cold	
			“ “ Water				Clear Cool	
Stage Manager	1	79.00	“ “ Elec. Power				Clear Cool	
Electrician	1	73.00	Carbons	188.84	Acts			
Asst. Electrician	1	73.00	Coal—Steam	178.37	Stanley Bros. & Attre	7852	166.25	
Property Man	1	79.00	Electric Light & Power					
Carpenter			Fire Alarm Service		Feeley, Melvin Sister	7853	190.00	
Clearers	2	146.00	Lamps					
Flymen			Music Scores	15.00	Walter Walters & Co.	7854	308.75	
Operators	4	399.00	Organ Maintenance					
Stage Doorman	1	20.00	Piano Rental		Bill Telaak & Co.	7855	475.00	
Reel Boys			Telephone & Telegraph	42.86				
			Tickets		Joe Laurie Jr. & Co.	7856	1187.50	Expense
Orchestra	13	917.00	Filter Service	13.00				Pay Roll
			Booking Office	450.00				Trade Bills
Bill Poster	1	36.00	Detective Service		M. L. B. A. Coms.	7857	122.50	Films & Acts
Publicity Man			Express					Check No.
			Film Delivery	10.00				
Overtime			Production Exp.					
			Traveling Exp.					These Lines to be
			Relief Mgr.					By Manager
			V. M. P. A. Dues					
			“Sound” Service Fee	40.00				
			Exp. Proj. Dept.	1.00				
			Mats—Cuts	9.58				
			Miscel. Expense	7860 17.04				1931
			Charity May 8th	7861 141.00				18958.82
								11477.75
								7481.07
Total		\$2417.00		Total	\$2145.04	Total	\$5575.00	

**Complainants' Exhibit B-13.**

Trade Bills		Check No. 7858	Films and Acts	Check No. 7858	Theatre LOEW'S STATE City Newark, N. J. Week Ending Fri. May 13th, 1932			
Newspapers		594.92	FILMS		RECEIPTS			
Per Advertising			Metro-Goldwyn-Mayer		Total			
Lobby Stills Photos					For the Day			
Display	Cut Outs	64.52	Letty Lynton	3000.00	Weather	Date		
Posters—Lith.	Cards	7.82	News 264	40.00				
Posters		1.66	News 265	30.00				
News Wkly & Add.		47.50	London—City of Tradition	42.00	Clear Cool	Sat. Mat. 7	1141.25	
Postage		49.36	Nanny	35.00	Clear Cool	" Eve. "	2245.80	3387.05
Shop					Clear Cool	Sun. Mat. 8	1611.90	
Posting		75.00	National Screen		Clear Cool	" Eve. "	2607.90	4219.80
			Trailer—Letty Lynton	20.00	Clear Cool	Mon. Mat. 9	999.80	
Maintenance—Repairs		96.00			Clear Cool	" Eve. "	994.70	1994.50
Auto Supplies		68.00	Metro-Goldwyn-Mayer		Clear Cold	Tues. Mat. 10	761.70	
Amateurs Supplies			Tennis—Technique 10/31	10.50	Clear Cold	" Eve. "	1328.30	2090.00
Ice Supplies		7.53	Forehand, Backhand 11/7	10.50	Clear Cold	Wed. Mat. 11	799.90	
Electric Supplies		2.89	Volley & Smash 11/14	10.50	Clear Cold	" Eve. "	1568.70	2368.60
Refrigerating Plant Supplies		23.15	Land of Maharajah 10/24	10.50	Clear Cold	Thur. Mat. 12	768.00	
" " Gas					Clear Cold	" Eve. "	1097.70	1865.70
" " Water					Clear Cool	Fri. Mat. 13	528.10	
" Elec. Power					Clear Cool	" Eve. "	970.20	1498.30
Refrigerators			ACTS					
Electric Light & Power		188.84	Stanley Bros. & Attre	7852 166.25				\$17423.95
Alarm Service		178.37	Feeley, Melvin Sister	7853 190.00	MISC. RECEIPTS			
Music Scores		15.00	Walter Walters & Co.	7854 308.75	Bank Int. Apr. 4.23			
Car Maintenance			Bill Telaak & Co.	7855 475.00	TOTAL INCOME \$17428.18			
Phone & Telegraph		42.86	Joe Laurie Jr. & Co.	7856 1187.50	Expense			
Printer Service		13.00			Pay Roll		\$2417.00	
Printing Office		450.00			Trade Bills		\$2145.04	
Electric Service			M. L. B. A. Coms.	7857 122.50	Films & Acts		\$5575.00	10137.04
Press					Check No.	Balance—Deficit		\$ 7291.14
Delivery		10.00			These Lines to be Left Blank { Overhead 3950.			
Production Exp.					By Manager { Profit Loss 3341.14			
Traveling Exp.					REMARKS & OPPOSITION			
Chief Mgr.								
M. P. A. Dues								
Sound Service Fee		40.00						
Proj. Dept.		1.00						
Stills—Cuts		9.58						
Travel Expense	7860	17.04						
Salary May Sth	7861	141.00						
Total		\$2145.04	Total	\$5575.00				



**Complainants' Exhibit B-27.**

REM.

Check No. 1630	
1630	3000.—
	40.—
	30.—
	3070.—
1630	95.00
1	475.00
2	475.00
3	522.50
4	1425.00
5	1662.50
6	142.50
7	252.50
	5050.00

### REMARKS & OPPOSITION

**GEORGE H. MINER**  
Bus. Manager

**Total      \$8120.—**

**Total**      **\$8120,—**



## Complainants' Exhibit B-29.

Payroll (Check No. 2077)	No. of Empl.	Trade Bills	Check No. 698	Films and Acts FILMS	Check No.	Theatre City—Astoria Week End Ri
Bus. Manager	95.	Newspapers	2078	81.12		
Asst. Bus. Manager	40.	Other Advertising		May 21-22-23-24		
Treasurer		Lobby Stills Photos		Letty Lynton	Metro	20.
Asst. Treasurer		Display Cut Outs		Down Memory Lane	Col	18.
Cashiers	2	Posters—Lith.—Cards		News #268	Metro	40.
Doormen	1	Trailers		Letty Lynton Trailer	Adv	2.75
Special Officers		Loew's W'kly & Add.		May 25-26-27		
Ushers	16	" " Postage	2068	Sky Bride	Para	450.
Matron	2	Sign Shop	2078	War Mamas	Metro	60.
Pages		Bill Posting		News #269	Metro	30.
Watchman		Maintenance—Repairs				
Superintendent	1	Booth Supplies				1300.75
Cleaners	4	Cleaners Supplies				
Porters	5	Office Supplies				
Engineer	1	Elec. Supplies				
Fireman		Cooling Plant Supplies				
Stage Manager	1	" " Gas				
Electrician	2	" " Water				
Asst. Electrician	1	" Elec. Power				
Property Man	1	Carbons				
Carpenter		Coal—Steam		May 21-22-23-24		
Clearers		Electric Light Est.		Audrey Wyckoff	2063	176.42
Flymen		Fire Alarm Service		Al. Shayne & Co.	2064	122.14
Operators	5	Lamps		Pepito & Co.	2065	271.42
Stage Doorman	1	Music Scores		Birnes & Kaye	2066	149.29
Reel Boys		Organ Maintenance		5 Jewels	2067	244.28
House Painter	8.	Piano Rental		M. L. B. A. Commissions	2076	50.73
Orchestra	9	Telephone & Telegraph		May 25-26-27		1014.26
Bill Poster	2	Tickets		Frank Peckless & Co.	2071	40.72
Publicity Man		Ice, Cups and Filter Service		Meryl & Lane	2072	47.50
Overtime		Booking Office		Walter Walters & Co.	2073	132.33
E. Ralph Electrician		Detective Service		Sammy Cohen & Co.	2074	305.36
Late show 5/21-23-25	7.50	Express		Stohe & Gebblows Revue	2075	162.86
G. Messmer 4th Show		Film Delivery		M. L. B. A. Commission	2076	36.24
5/22-29	19	Production Exp.				
S. Friedman Operator		Traveling Exp.				1739.29
3 hrs. 5/12/32	7.89	Relief Mgr.				
		V. M. P. A. Dues				
		"Sound" Service Fee				
		Miscel. Expense	2077	54.54		
Total					Total	\$3040.04

## Complainants' Exhibit B-29.

Trade Bills	Check No. 698	Films and Acts FILMS	Check No.	Theatre City—Astoria Week Ending May 27, 1932
Advertising	81.12	May 21-22-23-24		
Stills Photos		Letty Lynton	Metro	2078
Y Cut Outs		Down Memory Lane	Col	18.
Lith.—Cards		News #268	Metro	40.
W'kly & Add.		Letty Lynton Trailer	Adv	2.75
" Postage		May 25-26-27		
op		Sky Bride	Para	450.
ing		War Mamas	Metro	60.
nce—Repairs		News #269	Metro	30.
pplies				1300.75
Supplies				
pplies				
Plant Supplies				
" Gas				
" Water				
Elec. Power				
eam		May 21-22-23-24		
Light Est.		Audrey Wyckoff	2063	176.42
rm Service		Al. Shayne & Co.	2064	122.14
cores		Pepito & Co.	2065	271.42
aintenance		Birnes & Kaye	2066	149.29
ental		5 Jewels	2067	244.28
ne & Telegraph		M. L. B. A. Commissions	2076	50.73
is and Filter Service		May 25-26-27		1014.26
Office		Frank Peckless & Co.	2071	40.72
e Service		Meryl & Lane	2072	47.50
elivery		Walter Walters & Co.	2073	132.33
ion Exp.		Sammy Cohen & Co.	2074	305.36
g Exp.		Stohe & Gebblows Revue	2075	162.86
igr.		M. L. B. A. Commission	2076	36.24
A. Dues				
Service Fee				
Expense				
Total			Total	\$1580.69

WM. NITICHKE  
Bus. Manager

3



## Complainants' Exhibit B-37.

Trade Bills	Check No.	
Newspapers Est.	3631	550.00
Other Advertising	"	15.00
Lobby Stills Photos	"	
Display Cut Outs	"	75.57
Posters—Lith.—Cards	"	161.45
Trailers	"	6.57
Joe's Wkly & Add.	"	26.75
" " Postage	3633	36.89
Sign Shop	3631	100.00
Bill Posting	"	18.50
Sub. & Bus. Est.	"	150.00
Maintenance—Repairs	"	200.00
Food Supplies	"	31.18
Cleaners Supplies	"	39.70
Face Supplies	"	
Rec. Supplies	"	1.91
Coating Plant Supplies	"	
" " Gas	"	
" " Water E.	"	3.65
" " Elec. Power E.	"	30.00
Carbons	"	
Coal—Steam	"	
Electric Light & Power	"	469.99
Fire Alarm Service	"	
Bumps	"	103.90
Music Scores	"	
Organ Maintenance	"	
Piano Rental	"	
Telephone & Telegraph	"	66.97
Tickets	"	
Cups and Filter Service	"	
Bookkeeping Office	"	900.00
Detective Service	"	
Express	"	2.00
Film Delivery	"	6.00
Production Exp.	"	3.53
Traveling Exp.	"	7.35
M. P. A. Dues	"	
Sound Service Fee	"	40.00
Miscel. Expense	3633	66.62
<b>Total</b>		<b>\$3113.53</b>

## Films and Acts

FILMS
Joan Crawford & Robert Montgomery In "Letty Lynton"
Metro-News #266
Natl. Screen Seve. "Letty Lynton" Met.
Natl. Screen Seve. "Wet Parade" Met.
<b>ACTS</b>
Harry Rose
Buster Shaver With Olive & George
Brasno
Norman Prescott
Russ Martin Capt. of 12 C. Hale Girls & Boys
6 Extra Girls @ \$20.
J. Finn. Corp.
Prod. Expense
Acts. Comm.
Production
Stg. Putting on show
" Taking out "
" Band Regular

## Check No.

3631	2000.00
"	70.00
"	17.50
"	17.50
	2105.00
3622	534.37
3623	617.50
3625	427.50
3626	550.00
3627	120.00
3628	100.00
3629	1000.00
3630	83.13
3631	85.50
3633	104.50
"	35.75
"	225.00
<b>Total</b>	<b>\$5988.25</b>

Weather  
Unsetl.  
Fair  
Warm  
"  
"  
"  
"  
"  
"  
"  
"  
"  
"

Theatre VALENCIA  
City Jamaica, N. Y.  
Week Ending May 19, 1932.

## RECEIPTS

Date		Total For the Day
Fri. Mat. 5/13	899.50	
" Eve. 13	1666.05	2565.55
Sat. Mat. 14	808.45	
" Eve. "	2783.55	3592.00
Sun. Mat. 15	902.55	
" Eve. "	2625.00	3527.55
Mon. Mat. 16	750.80	
" Eve. "	1401.05	2151.85
Tues. Mat. 17	659.25	
" Eve. "	1183.95	1843.20
Wed. Mat. 18	822.40	
" Eve. "	1659.15	2481.55
Thur. Mat. 19	687.70	
" Eve. "	1210.35	1898.05

Midnite show Sat. 5/14

## MISC. RECEIPTS

Musician Part Salary 5/15	5/17	2.00
<b>TOTAL INCOME</b>		<b>\$18380.00</b>

Expense	
Pay Roll	\$4067.45
Trade Bills	\$3113.53
Films & Acts	\$5988.25
	13169.23

Check No. 3634 Balance	\$ 5210.77
These Lines to be Left Blank By Manager	Overhead 7650.
	Profit Loss 2439.23

## REMARKS &amp; OPPOSITION

17395.07  
16500.59  
894.48

A. D. ROBERTSON  
Bus. Manager



## Complainants' Exhibit B-39.

Payroll (Check No. 871)	No. of Empl.	Trade Bills	Check No. 870	Films and Acts	Check No. 870	Theatre P City Broo Week Endi Re
Bus. Manager	70.	Newspapers	70.91	FILMS		
Asst. Bus. Manager	30.	Other Advertising		May 21-22-23-24		
Treasurer		Lobby Stills Photos	26.25	Metro Letty Lynton	700.—	
Asst. Treasurer		Display Cut Outs	50.42	Metro News #268	40.	Weather
Cashiers	2	Posters—Lith.—Cards	90.88	Metro War Mamas	40.	Fair Sat. Mat
Doormen	1	Trailers	12.20	Adv. Letty Lynton Tr.	2.75	Rain " Eve
Special Officers		Loew's W'kly & Add.	120.38	May 25-26-27		Fair Sun. Mat
Ushers	10	" " Postage	178.60	Para. Sky Brides	450.—	" " Eve
Matron	1	Sign Shop	30.	Metro News #269	30.	" Mon. Mat
Pages Mezz. Alt.	1	Bill Posting	40.	Pathe Extra Extra	30.	" " Eve
Watchman	1	Maintenance—Repairs	137.27	Col. 48th Amendt. Repeal	12.	" Tues. Mat
Superintendent	1	Booth Supplies	166.35	April 9-15		" " Eve
Cleaners	4	Cleaners Supplies	18.31	War Man Who Played God Tr.	5.—	" Wed. Mat
Porters	3	Office Supplies				" " Eve
Engineer	2	Elec. Supplies			1309.75	Warm Thurs. Mat
Fireman		Cooling Plant Supplies				" " Eve
Painter	1	" " Gas	208.25			Fair Fri. Mat
Stage Manager	1	" " Water				Rain " Eve
Electrician	2	" Elec. Power	150.			
Asst. Electrician	1	Carbons	71.31	ACTS		
Property Man	1	Coal—Steam		May 21-22-23-24		
Carpenter		Electric Light & Power	295.	Donals Sisters	81.42	Gross 1931 10449.65
Clearers		Fire Alarm Service		3 Keena Sisters	95.	Exp. 8907.19 M
Flymen		Lamps		Carl Emmy's Pets	285.	Co. Ex. 1542.46
Operators	5	Music Scores	15.	Eddio Pardo & Co	325.72	Misc.
Stage Doorman	1	Organ Maintenance		Southern Gaities Co	298.58	
Reel Boys		Piano Rental		M. L. B. A. Comm.	57.14	
Orchestra		Telephone & Telegraph			1142.86	
Bill Poster	2	Tickets	19.45			
Publicity Man		Ice, Cups and Filter Service		May 25-26-27		Expense
Overtime		Booking Office	400.	John & Mary Mason		Pay Roll
Operators	12.76	Detective Service	19.95	Mel Klee	162.86	Trade Bills
Orchestra	18.	Express	1.06	N. T. G. & Revue	712.50	Films & Acts
Orchestra	36.—	Film Delivery	7.50	M. L. B. A. Comm.	46.07	
Stage Hands	46.75	Production Exp.				Check No. 872 Balance
Midnight Show	20.26	Traveling Exp.			2064.29	These Lines to be Left Blank By Manager
		V. M. P. A. Dues	4.50			REMARKS
		"Sound" Service Fee	40.—			
		Miscel. Expense Ck #871	48.41			
Total			\$2417.77	Total		\$3374.04

## Complainants' Exhibit B-39.

Trade Bills	Check No. 870	Films and Acts	Check No. 870	Theatre PITKIN City Brooklyn, N. Y. Week Ending May 27 1932	RECEIPTS	Total For the Day
Newspaper	70.91	FILMS				
Other Advertising		May 21-22-23-24				
Lobby Stills Photos	26.25	Metro Letty Lynton	700.—			
Display Cut Outs	50.42	Metro News #268	40.	Weather		
Posters—Lith.—Cards	90.88	Metro War Mamas	40.	Fair Sat. Mat. 5/21	765.40	
Trailers	12.20	Adv. Letty Lynton Tr.	2.75	Rain " Eve.	1689.10	2454.50
Loew's W'kly & Add.	120.38	May 25-26-27		Fair Sun. Mat. 5/22	691.45	
" " Postage	178.60	Para. Sky Brides	450.—	" Eve.	1676.	2367.45
Sign Shop	30.	Metro News #269	30.	" " "		
Bill Posting	40.	Pathe Extra Extra	30.	Mon. Mat. 5/23	343.65	
Maintenance—Repairs	137.27	Col. 48th Amendt. Repeal	12.	" Eve.	351.35	695.
Booth Supplies	166.35	April 9-15		Tues. Mat. 5/24	248.55	
Cleaners Supplies	18.31	War Man Who Played God Tr.	5.—	" Eve.	348.65	597.20
Office Supplies				Wed. Mat. 5/25	432.70	
Elec. Supplies			1309.75	" Eve.	484.95	917.65
Cooling Plant Supplies				Thurs. Mat. 5/26	435.45	
" " Gas	208.25			" Eve.	436.	871.45
" " Water				Fri. Mat. 5/27	293.75	
" Elec. Power	150.			" Eve.	574.10	867.85
Carbons	71.31	ACTS				\$8771.10
Coal—Steam		May 21-22-23-24				
Electric Light & Power	295.	Donals Sisters	81.42	Gross 1931 10449.65		
Fire Alarm Service		3 Keena Sisters	95.	Exp. 8907.19	Mid. Show 5/21	1027.80
Lamps		Carl Emmy's Pets	285.	Co. Ex. 1542.46		
Music Scores	15.	Eddio Pardo & Co	325.72		Misc. RECEIPTS	
Organ Maintenance		Southern Gaities Co	298.58			
Piano Rental		M. L. B. A. Comm.	57.14		TOTAL INCOME	\$9798.90
Telephone & Telegraph			1142.86			
Tickets	19.45					
Ice, Cups and Filter Service		May 25-26-27			Expense	
Booking Office	400.	John & Mary Mason			Pay Roll	\$2417.77
Detective Service	19.95	Mel Klee	162.86		Trade Bills	\$2222.00
Express	1.06	N. T. G. & Revue	712.50		Films & Acts	\$3374.04
Film Delivery	7.50	M. L. B. A. Comm.	46.07			8013.81
Production Exp.					Check No. 872 Balance	\$1785.09
Traveling Exp.			2064.29		These Lines to be Left Blank By Manager	Overhead 7600.
						Loss 5814.91
V. M. P. A. Dues	4.50					
"Sound" Service Fee	40.—					
Miscel. Expense Ck #871	48.41					
Total			\$2222.00	Total		\$3374.04

REMARKS &amp; OPPOSITION

SEYMOUR R. MAY  
Bus. Manager

# MICRO CARD

TRADE MARK 

22

39

2

1416



65





**Complainants' Exhibit B-43:**

Trade Bills			Films and Acts		Check No.		Theatre LOEW'S ROCHESTER City Rochester, New York Week Ending May 5, 1932				
Newspapers	6212-13-14	310.00	FILMS		FR	1239.50	RECEIPTS				
Lobby Advertising			M. G. M. Dist. Corp.				Total For the Day				
Lobby Stills Photos			"Letty Lynton"		6206	75.00					
Display Cut Outs	6193	58.29			6206	100.00					
	6194				6206	50.00					
Posters—Lith.—Cards	6199	138.18	News #262								
Billers	6195-96	8.69	"Spanky"—Our Gang								
W's Wkly & Add.			Olympic Events								
Postage											
Shop	6197-98	10.09	Universal Film Exch.		6207	12.50					
Posting	6200	3.79	Airmail Mystery #4								
Exterminating											
d. Service	6202	18.00									
P. Cuts	6212	18.86	National Screen Serv.			17.75					
th Supplies			"Tr. Letty Lynton"		6208						
iners Supplies	6201	10.78									
ce Supplies											
Supplies	6211	2.71									
ling Plant Supplies						1494.75					
" " Gas											
" " Water											
" Elec. Power			"Whirligigs"				Total Attend.—25,175				
bons			Acts			285.00					
um	6205	200.00	Paul Kirkland		6178	178.12					
tric Light & Power	6205	300.00	Barte & Arden		6179	308.75					
er General Service	6215	38.91	Four Flash Devils		6180	178.72					
aps			LaVernes		6181	195.94					
ic Scores			Three White Flashes		6182	142.50					
an Maintenance			Paul Keast		6183	60.00					
no Rental			George Giddon		6184	30.00					
phone & Telegraph	6203	15.87	Gene DuPont		6185	720.00					
ets			C. Beverly—Captain		6186	100.00					
Cups and Filter Service			E. Warefield—Corp.		6187	100.00					
king Office	6193	275.00	MLBA Production Exp.		6189	67.82					
ective Service	6193	7.60	MLBA Commissions		6190	30.00					
ress			2 extra local girls		6188	931.00					
n Delivery	6210	7.95	Stage Band		6192	20.00					
duction Exp.			Carloader		6192	49.00					
veling Exp.			Hauling Unit—Burke & McHugh		6209						
ief Mgr.	6193	165.45									
M. P. A. Dues											
und Service Fee	6204	40.00									
div ? ?	6193	20.68	Less \$20.68 MLBA credit								
cel. Expense	6192	93.96									
Total		\$1703.45*			Total	\$4891.00					

Weather		Fri. Mat. 4/29		540.50	1502.30
Cool	"	Eve.		961.80	
Rn.—Cold	Sat. Mat. 4/30			927.05	2396.85
" "	"	Eve.		1469.80	
Cold	Sun. Mat. 5/1			724.45	1943.65
Rn.—Cold	"	Eve.		1219.20	
Cold	Mon. Mat. 5/2			488.70	953.35
"	"	Eve.		464.65	
Fair	Tues. Mat. 5/3			646.55	1254.85
Cool	"	Eve.		608.30	
"	Wed. Mat. 5/4			449.50	1011.70
"	"	Eve.		562.20	
"	Thur. Mat. 5/5			524.45	1098.75
"	"	Eve.		574.30	
Total Attend.—25,175					\$10161.45

MISC. RECEIPTS				
Napkins	5/4	9.50		
Cups	5/4	3.71		
Weight Mach.	5/4	6.14		
Candy Comm.	5/5	3.28		
TOTAL INCOME			\$10184.08	

Expense		
Pay Roll	\$1593.38	
Trade Bills	\$1703.45	
Films & Acts	\$4891.00	8187.83
Check No.	Balance	\$1996.25

Overhead		3670.
Loss		1673.75



## Complainants' Exhibit C-3.

Payroll (Check No. 7178)	No. of Empl.	Trade Bills	Check No.	
Bus. Manager	70.—	Newspapers	7177	61.20
Asst. Bus. Manager	30.—	Other Advertising		
		Lobby Stills Photos		6.25
Treasurer		Display Cut Outs		41.42
Asst. Treasurer		Posters—Lith.—Cards		159.06
Cashiers	3	Trailers		50.62
Doormen	2	Loew's Wkly & Add.		86.—
Special Officers		" " Postage		46.49
Ushers	12	Sign Shop		34.—
Matron	12.—	Bill Posting	Bal 55.05	120.55
Pages		Subway Est.		125.—
Watchman	22.—	Maintenance—Repairs		51.74
		Booth Supplies		60.85
Superintendent		Cleaners Supplies		
Cleaners	5	Office Supplies		1.80
Porters	3	Elec. Supplies		
Engineer	2	Cooling Plant Supplies Oil		15.50
Fireman		" " Gas		
		" " Water		60.—
Stage Manager	73.—	" Elec. Power		175.—
Electrician	70.—	Carbons		71.31
Asst. Electrician	62.—	Coal—Steam		
Property Man	70.—	Electric Light & Power		225.—
Carpenter		Fire Alarm Service		
Clearers		Lamps		
Flymen	62.—	Music Scores		15.—
Operators	5	Organ Maintenance		
Stage Doorman	20.—	Piano Rental		36.—
Reel Boys		Telephone & Telegraph		15.45
		Tickets		
Orchestra	9	Ice, Cups and Filter Service		
		Booking Office		100.—
Bill Poster	2	Detective Service		
Publicity Man	85.—	Express		9.—
		Film Delivery		7.50
		Production Exp.		
Overtime		Traveling Exp.		
Midnight	17.76	Relief Mgr.		
		V. M. P. A. Dues		
		"Sound" Service Fee		40.—
		Miscel. Expense	7178	35.91
Total	\$2120.48	Total		\$1650.65

Films and Acts	Check No.		Theatre G. City Brook Week Endin	Recs
FILMS	7177			
May 28-29-30-31	M.G.M.	800.—	Weather	
Letty Lynton	Col	18.—	Cldy—Warm	Sat. Mat.
Down Memory Lane		40.—	" " "	" Eve.
Hearst Metro News 270			" " Cool	Sun. Mat.
			" " "	" Eve.
June 1-2-3			Cl " "	Mon. Mat.
Sky Bride	Par.	450.—	" " "	" Eve.
War Manias	MGM	60.—	Fair " "	Tues. Mat.
Hearst Metro News 271		30.—	" " "	" Eve.
Letty Lynton Sound	Adv.	2.75	Cl Warm	Wed. Mat.
What A Knight 5/14-17	Col	24.—	Cldy	" Eve.
		1424.75	" " "	Thur. Mat.
			" " "	" Eve.
			Cl & Warm	Fri. Mat.
			" " "	" Eve.
ACTS				
May 28-29-30-31	7166	81.42		Misc. 1
Hoffman & Lambert	67	149.29		
Elmer Cleve	68	95.—		
Miss Juliet	69	190.—	Expense	
Russ Brown	70	434.28	Pay Roll	
Bernice & Emily Co		50.01	Trade Bills	
Act Comm			Films & Acts	
		1000.00		
June 1-2-3			Check No. 7179	Balance
Millard & Millicent	71	38.—		
2 Blossoms	72	57.—	These Lines to be Left Blank	
Weist & Stanton	73	190.—	By Manager	
Eddie Garr	74	203.58		REMARKS &
Southern Gaities	75	223.92	6/5/31	
Act. Comm.	76	37.50	Inc	7702.20
			Exp	2548.47
		750.00		
Total		\$3174.75	Co Exc.	153.73



**Complainants' Exhibit C-3.**

Trade Bills		Check No.	Films and Acts	Check No.	Theatre GATES City Brooklyn N. Y. Week Ending June 3 1932	
Newspapers	67177	61.20				
Other Advertising						
Lobby Stills Photos		6.25				
Display Cut Outs		41.42	May 28-29-30-31			
Posters—Lith.—Cards		159.06	Letty Lynton	M.G.M.	800.—	
Trailers		50.62	Down Memory Lane	Col.	18.—	
Loew's Wkly & Add.		86.—	Hearst Metro News 270		40.—	
Postage		46.49				
Sign Shop		34.—				
Bill Posting	Bal 55.05	120.55	June 1-2-3			
Subway Est.		125.—	Sky Bride	Par.	450.—	
Maintenance—Repairs		51.74	War Mamas	MGM	60.—	
Booth Supplies		60.85	Hearst Metro News 271		30.—	
Cleaners Supplies			Letty Lynton Sound	Adv.	2.75	
Office Supplies		1.80	What A Knight 5/14-17	Col	24.—	
Elec. Supplies						
Cooling Plant Supplies Oil		15.50			1424.75	
" " Gas						
" " Water		60.—				
" " Elec. Power		175.—				
Carbons		71.31				
Coal—Steam						
Electric Light & Power		225.—	May 28-29-30-31			
Fire Alarm Service			Hoffman & Lambert	7166	81.42	
Lamps			Elmer Cleve	67	149.29	
Music Scores		15.—	Miss Juliet	68	95.—	
Organ Maintenance			Russ Brown	69	190.—	
Piano Rental		36.—	Bernice & Emily Co.	70	434.28	
Telephone & Telegraph		15.45	Act Comm		50.01	
Tickets						
Ice, Cups and Filter Service					1000.00	
Booking Office		100.—				
Detective Service			June 1-2-3			
Express		9.—	Millard & Millicent	71	38.—	
Film Delivery		7.50	2 Blossoms	72	57.—	
Production Exp.			Weist & Stanton	73	190.—	
Traveling Exp.			Eddie Garr	74	203.58	
Relief Mgr.			Southern Gaities	75	223.92	
V. M. P. A. Dues			Act. Comm.	76	37.50	
"Sound" Service Fee		40.—				
Miscel. Expense	7178	35.91			750.00	
Total		\$1650.65		Total	\$3174.75	

7177

RECEIPTS

Date	Mat.	Eve.	Total For the Day
Sat. 5/28	566.60		
Sun. 5/29	1057.30	835.75	1623.90
Mon. 5/30	521.85	917.15	2348.15
Tues. 5/31	437.60	485.65	923.25
Wed. 6/1	184.10	408.80	592.90
Thur. 6/2	201.55	325.30	526.85
Fri. 6/3	170.65	289.85	460.50
			\$7914.55
Midnight Show			126.95

MISC. RECEIPTS

Expense	Amount
Pay Roll	\$2120.48
Trade Bills	\$1650.65
Films & Acts	\$3174.75
Check No. 7179 Balance	\$1095.62
Overhead	2325.
These Lines to be Left Blank By Manager	
Profit Loss	1229.38

REMARKS & OPPOSITION

6/5/31

Inc 7702.20

Exp 2548.47

Co Exc. 153.73

7177

FILMS

May 28-29-30-31

Letty Lynton

Down Memory Lane

Hearst Metro News 270

June 1-2-3

Sky Bride

War Mamas

Hearst Metro News 271

Letty Lynton Sound

What A Knight 5/14-17

ACTS

May 28-29-30-31

Hoffman & Lambert

Elmer Cleve

Miss Juliet

Russ Brown

Bernice & Emily Co.

Act Comm

June 1-2-3

Millard & Millicent

2 Blossoms

Weist & Stanton

Eddie Garr

Southern Gaities

Act. Comm.

(Signature illegible)

Bus. Manager

**Complainants, Exhibit C-12.**

Payroll (Check No. 596)		No. of Empl.	Trade Bills		Check No. 595	Films and Acts		Check No. 595	Films and Acts		Check No. 595	Films and Acts		Check No. 595	Theatre LOEW'S THEATRE City Yonkers, N. Y. Week Ending Jun. 10 1932	
Bus. Manager	1	75.—	Newspapers	595	59.35	FILMS		595	59.35	FILMS		595	59.35	RECEIPTS		
Asst. Bus. Manager	1	40.—	Other Advertising			6/4-7/32				6/4-7/32				Total For the Day		
Treasurer			Lobby Stills Photos		97.58	Letty Lynton		Metro	700.—	Letty Lynton		Metro	700.—			
Asst. Treasurer			Display Cut Outs		36.75	" " Score				" " Score						
Cashiers	1	20.—	Posters—Lith.—Cards		42.94	Down Memory Lane		Col.	24.—	Down Memory Lane		Col.	24.—			
Doormen	1	22.—	Trailers		11.75	Air Mail Mystery #11		Univ.	15.—	Air Mail Mystery #11		Univ.	15.—			
Special Officers			Loew's W'kly & Add.	596	52.26	Metrotone News #272		Metro	40.—	Metrotone News #272		Metro	40.—			
Ushers	6	58.—	Sign Shop	595	30.—	6/8-10/32				6/8-10/32						
Matron	1	6.—	Bill Posting			Young America		Fox	118.20	Young America		Fox	118.20			
Pages			License Fee		60.—	" " Score				" " Score						
Watchman	1	20.—	Maintenance—Repairs		168.92	High Hats & Low Brows		Pathe	45.—	High Hats & Low Brows		Pathe	45.—			
Superintendent			Booth Supplies		47.90	Universal News #46		Univ.	30.—	Universal News #46		Univ.	30.—			
Cleaners	3	30.—	Cleaners Supplies		4.58	Sou. Tr. The Mouthpiece			5.—	Sou. Tr. The Mouthpiece			5.—			
Porters	2	35.—	Office Supplies													
Engineer	1	60.—	Elec. Supplies						992.20				992.20			
Fireman	1	30.—	Cooling Plant Supplies													
Stage Manager	1	73.—	" " Gas		6.—				6.—				6.—			
Electrician	1	80.—	" " Water													
Asst. Electrician	1	80.—	Elec. Power		175.—				175.—				175.—			
Property Man	1	68.—	Piano Rental		10.—				10.—				10.—			
Carpenter			Coal		10.25	6/4-7/32			10.25	6/4-7/32			10.25			
Clearers			Electric Light & Power		250.—	Rasso & Co.		583	57.—	Rasso & Co.		583	57.—			
Flymen	1	59.—	Fire Alarm Service			Edwards & Morris		584	81.42	Edwards & Morris		584	81.42			
Operators	5	414.—	Lamps		31.75	Leon Navarro		585	135.72	Leon Navarro		585	135.72			
Stage Doorman	1	10.—	Music Serv.		15.—	Pilcer & Douglas		586	190.—	Pilcer & Douglas		586	190.—			
Reel Boys	1	10.—	Organ Maintenance			Col. Stoopnagle & Budd		587	678.58	Col. Stoopnagle & Budd		587	678.58			
Orchestra	8	545.—	Piano Rental			Comm.		593	60.14	Comm.		593	60.14			
Bill Poster	1	50.—	Telephone & Telegraph		31.50	6/8-10/32			31.50	6/8-10/32			31.50			
Publicity Man			Tickets		11.20	Zelda Bros.		588	61.08	Zelda Bros.		588	61.08			
Overtime Operators	3	55.50	Ice, Cups and Filter Service		31.97	Meryl & Lane		589	91.61	Meryl & Lane		589	91.61			
			Booking Office		250.—	Sammy Krivoff & Co.		590	203.58	Sammy Krivoff & Co.		590	203.58			
			Detective Service			Eddie Garr		591	203.58	Eddie Garr		591	203.58			
			Express		7.50	Adele Nelson's Elephants		592	203.58	Adele Nelson's Elephants		592	203.58			
			Film Delivery		12.—	Comm.		593	40.16	Comm.		593	40.16			
			Production Exp.													
			Traveling Exp.		1.96				2006.45				2006.45			
			V. M. P. A. Dues													
			"Sound" Service Fee		40.—											
			Records		6.05											
			Misc. Supp.		1.86											
			Miscel. Expense	596	24.54				596				24.54			
Total		\$1750.50	Total		\$1578.11			Total		\$2998.65		Total		\$2998.65		
6/12/31 Inc. 8667 Exp. 6862 Co. Ex. 1805																
6/12/31 Inc. 8667.89 Exp. 6862.12 Co. Ex. 1805.77																
CHARLES F. BURNS Bus. Manager																



## Complainants' Exhibit C-13.

Payroll (Check Nos. 7371-72-73-74, 7396-97 - No. of Empl.	Trade Bills	Check No.	Films and Acts	Check No.
Bus. Manager 150	Newspapers 7401-7407			
Asst. Bus. Manager 2 66.	Other Advertising 7394-7400 583.63			
	Lobby Stills Photos 7381-92 7.75			
Treasurer 34	Display Cut Outs 7385 5.89			
Asst. Treasurer	Posters—Lith.—Cards 7384 7.08			
Cashiers 5 89.	Trailers 7384 7.08			
Doormen 2 36.	Loew's W'kly & Add. 7384 7.08			
Special Officers 2 51.	" " Postage 7384 7.08			
Ushers 14 190.25	Sign Shop 7391-93 4.94			
Matron 2 25.	Toilet Paper 7376 5.14			
Pages	Maintenance—Repairs 7376-86 225.80			
Watchman 1 30.	Booth Supplies 7377 45.21			
Clockroom 1 14.	Cleaners Supplies 7385 5.34			
Superintendent	Office Supplies 7385 5.34			
Cleaners 6 75.	Elec. Supplies 7376 14.02			
Porters 3 64.	Cooling Plant Supplies 7376 14.02			
Engineer & ass't 2 102.	" " Gas			
Fireman	" " Water			
Stage Manager 2 129.	" Elec. Power			
Electrician 2 120.	Carbons 7376 3.82			
Electrician 1 65.	Ushers Supp. 7387 246.50			
Property Man 2 120.	Electric Light & Power 7387 246.50			
Carpenter	Fire Alarm Service			
Clearers 4 212.	Lamps 56.43			
	Lamps Booth .85			
Flymen	Music Scores			
Operators 4 324.	Organ Maintenance			
Stage Doorman 22.	Piano Rental			
Reel Boys	Telephone & Telegraph 7388-89-90 44.81			
Mr. Devlin's office 10.	Tickets			
Orchestra 20 4350.—	Ice, Cups and Filter Service			
Bill Poster	Booking Office 7385 100.00			
Press Dept.	Detective Service			
Publicity Man 2 50.50	Express			
Poster artist 45.	Film Delivery 7378 3.00			
Overtime Booth 4 3.32	Production Exp.			
	Traveling Exp.			
	Relief Mgr. 7385 36.75			
	V. M. P. A. Dues			
	"Sound" Service Fee 7383 40.00			
	Permit—Signs 7395 5.00			
	Sun license 7380 12.00			
	Miscel. Expense 7399 23.58			

Total \$3374.07

Total \$1477.54

Total \$4447.58

## Complainants' Exhibit C-13.

Trade Bills	Check No.	Films and Acts	Check No.
Advertising 7401-7407			
by Stills Photos 7394-7400 583.63			
Day Cut Outs 7381-92 7.75			
Lith.—Cards 7385 5.89			
W'kly & Add. 7384 7.08			
Postage 7391-93 4.94			
Shop 7376 5.14			
Paper			
Maintenance—Repairs 7376-86 225.80			
Supplies 7377 45.21			
ers Supplies 7385 5.34			
Supplies 7376 14.02			
g Plant Supplies			
" Gas			
" Water			
Elec. Power			
ns			
s Supp. 7376 3.82			
ic Light & Power 7387 246.50			
Alarm Service			
Lamps 56.43			
Booth .85			
Scores			
Maintenance			
Rental			
one & Telegraph 7388-89-90 44.81			
ups and Filter Service			
ng Office 7385 100.00			
ive Service			
ss			
Delivery 7378 3.00			
tion Exp.			
ing Exp.			
Mgr. 7385 36.75			
P. A. Dues			
d" Service Fee 7383 40.00			
t—Signs 7395 5.00			
cense 7380 12.00			
Expense 7399 23.58			

Total \$1477.54

Total \$4447.58

Theatre ORPHEUM  
City Boston  
Week Ending 5/19 1932

## RECEIPTS

Weather	Date	Total For the Day
Un	Fri. Mat. 5/13	1627.60
F & C	" Eve.	1258.75
" W	Sat. Mat. 14	1558.85
"	" Eve.	1752.60
"	Sun. Mat. 15	685.70
"	" Eve.	1169.05
"	Mon. Mat. 16	1217.50
"	" Eve.	513.00
V Warm	Tues. Mat. 17	939.30
"	" Eve.	677.75
F & C	Wed. Mat. 18	1279.00
"	" Eve.	1145.45
F & C	Thur. Mat. 19	1106.85
"	" Eve.	916.30

## MISC. RECEIPTS

N. E. Tel. Com. 3/1-5/3/32	16.02
Candy Stand Com. 5/8-14/32	44.11

TOTAL—INCOME \$15907.83

Expense	
Pay Roll	\$3374.07
Trade Bills	\$1477.54
Films & Acts	\$4447.58
	9299.19

Check No. Balance \$6608.64

Overhead 4910.—

Profit 1698.64

H. J. MORRIS  
Bus. Manager



[illegible][illegible]



[illegible]

Check  
No.

2155

440.96

Films and Acts

Check  
No.

2155

1500.

## FILMS

Metro—"Letty Lynton"

69.84 " News #264

37.97 Fitz. Trav. "Ireland"

6.15 Nat. Scr. "Letty Lynton"

54.05

2157

28.93

120.

15.

100.

9.80

11.64

2.20

7.50

475.74

## ACTS

## "THREE SCREENS"

51.70 Chaney &amp; Fox

Al. Norman

Joe Griffin

Stella Power

98.76 Franklyn D'Amore &amp; Co.

74.62 14 Male Girls—Gert. Mazza—Captain

6 extra girls

800. Thos. Keeney—carpenter

M. L. B. A. Prod. Cost

22.54 M. L. B. A.—Act. Comm.

10. Transfer

Stage—set show

8.35

40.

2485.72

51.98

2433.74

157

53.29

\$2487.03

Total

\$4374.65

Theatre JERSEY CITY

City Jersey City, N. J.

Week Ending May 12, 1932.

## RECEIPTS

Weather

Date

\*Total  
For the Day

Cloudy

Fri. Mat.

6

691.90

2422.60

"

" Eve.

7

1730.70

3983.80

"

Sat. Mat.

7

862.65

"

" Eve.

8

3121.15

Rain

Sun. Mat.

8

1846.75

Cloudy

" Eve.

9

3671.75

Fair

Mon. Mat.

9

844.85

Cool

" Eve.

10

1221.95

"

Tues. Mat.

10

669.35

"

" Eve.

11

1601.20

"

Wed. Mat.

11

654.95

Rain

" Eve.

12

2178.40

"

Thur. Mat.

12

715.20

"

" Eve.

12

1247.10

\$21057.90

Midnite show 5/7/32

261.00

21318.90

## MISC. RECEIPTS

Benefit—Women's Intnl. League Peace  
& Freedom of J. City

347.85

Bank interest—April

21666.75

3.81

## TOTAL INCOME

\$21670.56

Expense

Pay Roll

\$4109.88

Trade Bills

\$2487.03

Films &amp; Acts

\$4374.65

10971.56

Check No. 2158 Balance

\$10699.00

These Lines to be Left Blank  
By Manager

Overhead 6100.

Profit Loss 4599.00

## REMARKS &amp; OPPOSITION

1931

22,847.01 Rec.

15,496.11 Exp.

7,350.90 Prof.

(Name illegible)  
Bus. Manager



**Complainants' Exhibit D-8.**

J. DE ROSA



## Complainants' Exhibit D-10.

Payroll (Check No.)	No. of Empl.	Trade Bills	Check No.	Films and Acts FILMS	Check No.	Screen "Letty" Stage "Whirligigs"
Bus. Manager		150.00	9468-9-70-71	299.06		
Asst. Bus. Manager		50.00		M-G-M "Letty Lynton"	1400.00	
Treasurer				M-G-M News #264	9490 75.00	
Asst. Treasurer				Red Noses Pitts Todd	" 150.00	
Cashiers	2	32.00	9488	Piscatorial Pleasures	" 50.00	
Doormen	1	20.00	9488			
Special Officers					275.00	
Ushers	14	122.00	9473	Nat'l Screen		Weather
Matron	1	10.00		5/6 Tkg. tr: "Letty Lynton"	9491 17.75	Rain
Pages				4/15 pstg: "Flesh is Weak"	" .08	"
Watchman	1	10.00		4/22 " "Any Old Port"	" .23	"
Superintendent	1	16.00	9474	4/29 " "Feller Needs Friend"	" .25	"
Cleaners	4	48.00	9488		18.31	Cool
Porters	3	53.00	9476	"Whirligigs" unit	1693.31	"
Engineer	2	90.00	9487	ACTS		"
Fireman				Paul Kirkland	25% 9451 285.00	"
Stage Manager				Barte & Arden	" 9452 178.12	"
Electrician	1	75.50	9477	4 Flash Devils	9453 308.75	Cool
Asst. Electrician	1	70.50		LaYernes	" 9454 178.12	"
Property Man	1	75.50	9478	3 White Flashes	" 9455 195.94	
Carpenter & asst.	2	156.00		Paul Keast	9456 142.50	Attendance 2990
Clearers				Geo. Kiddon	9457 60.00	
Flamen & asst.	2	146.00	9479	Gene Dupont	9458 30.00	
Operators	4	272.00	9480	Charlotte Beverly, Capt.		
Stage Doorman	1	15.00		14 Chester Hale Girls		
Reel Boys				2 extra girls	9459 750.00	
Orchestra				E. Wakefield, carp.	9460 100.00	Expense
Poster artist	1	60.00		Prod. Expense	9461 100.00	Pay Roll
Publicity Man				Lucia Romano, soloist over.	9462 25.00	Trade Bills
Overtime stage spec. show		10.00				Films & Acts
stage open, close		33.00		Act Comm.	9464 67.82	Check No.
					2421.25	
				Stage band	9465 930.00	
				Elect. changing colors	9466 6.00	
				Carloaders	9466 20.00	
				Burns Bros. Hauling Unit	9492 58.00	
					3435.25	
Total		\$1514.50	Total		\$5128.56	



# Complainants' Exhibit D-10.

Trade Bills	Check No.	
Newspapers	9468-9-70-71	299.06
Over Marvin Tickets		
Over Advertising		
Lobby Stills Photos	9488	45.91
Display Cut Outs	9488	51.46
9-70		
ers—Lith.—Cards	9488	8.69
ilers 9472	9488	25.98
w's Wkly & Add.		
Postage		
Shop	9473	4.90
Posting		
Maintenance—Repairs	9474 9488	30.47
th Supplies	9476	8.80
ners Supplies	9475-85 9487	22.93
e Supplies		
Supplies		
ing Plant Supplies		
" " Gas		
" " Water		
" " Elec. Power		
ons	9477	67.69
—Steam		
tric Light & Power	9478	200.00
Alarm Service		
ips		
duction overture	9479 9480	15.10
an Maintenance		
no tuning	9481	5.00
phone & Telegraph	9482 9486	84.41
ets		
Cups and Filter Service		
king Office	9488	250.00
ective Service		
iety subscription	9488	5.00
n Delivery	9484	3.70
duction Exp.		
veling Exp.		
A. Downs	9488	36.68
M. P. A. Dues		
und" Service Fee	9489	40.00
n serv. April	9483	55.00
F. Shaw exp.	9493	58.27
cel. Expense		
Total		\$1319.05

Films and Acts	
FILMS	
M-G-M	
"Letty Lynton"	
M-G-M	
News #264	
Red Moses Pitts Todd	
Piscatorial Pleasures	
Nat'l Screen	
5/6 Tkg. tr. "Letty Lynton"	
4/15 pstg. "Flesh is Weak"	
4/22 " "Any Old Port"	
4/29 " "Feller Needs Friend"	
ACTS	
Paul Kirkland	
Barte & Arden	
4 Flash Devils	
La Vernes	
3 White Flashes	
Paul Keast	
Geo. Kiddon	
Gene Dupont	
Charlotte Beverly, Capt.	
14 Chester Hale Girls	
2 extra girls	
E. Wakefield, carp.	
Prod. Expense	
Lucia Romano, soloist over.	
Act Comm.	
Stage band	
Elect. changing colors	
Carloaders	
Burns Bros. Hauling Unit	

Check No.	
1400.00	
9490	75.00
"	150.00
"	50.00
275.00	
9491	17.75
"	.08
"	.23
"	.25
18.31	
1693.31	
25%	9451 285.00
"	9452 178.12
"	9453 308.75
"	9454 178.12
"	9455 195.94
"	9456 142.50
"	9457 60.00
"	9458 30.00
9459	750.00
9460	100.00
9461	100.00
9462	25.00
2353.43	
9464	67.82
2421.25	
9465	930.00
9466	6.00
9466	20.00
9492	58.00
3435.25	
Total	\$5128.56

## Screen "Letty Lynton" Stage "Whirligigs" unit

Theatre LOEW'S STATE  
City Syracuse, N. Y.  
Week Ending May 12 193 ?

Weather	Date	Total For the Day
Rain	Fri. Mat. 5/6	655.85
"	" Eve. 5/6	1143.80
"	Sat. Mat. 5/7	1245.95
"	" Eve. 5/7	1777.60
"	Sun. Mat. 5/8	1002.20
"	" Eve. 5/8	1653.25
Cool	Mon. Mat. 5/9	594.10
"	" Eve. 5/9	590.55
Rain	Tues. Mat. 5/10	580.80
"	" Eve. 5/10	658.95
"	Wed. Mat. 5/11	551.95
"	" Eve. 5/11	724.70
Cool	Thur. Mat. 5/12	446.05
"	" Eve. 5/12	545.40
Attendance 29903		\$12171.15

## Misc. RECEIPTS

Expense	Total Income
Pay Roll	\$1514.50
Trade Bills	\$1319.05
Films & Acts	\$5128.56
Check No.	Balance—Deficit
	Overhead 5000.00
	Profit Loss 790.96

## Complainants' Exhibit D-20.

Payroll (Check Nos. 2554, 2583)	No. of Empl.	Trade Bills	Check No.	Films and Acts	Check No.		
Bus. Manager	1	125.00	Newspapers	2557-8-9	660.75		
Asst. Bus. Manager	1	40.00	Other Advertising				
			Lobby Stills, Photos				
Treasurer	1	30.00	Display Ad Cut Outs	2560-1	102.02		
Asst. Treasurer			Posters—Lith.—Cards				
Cashiers	3	51.00	Trailers	2562	7.30		
Doormen	1	25.00	Loew's W'kly. & Add.				
Special Officers			" " Postage				
Ushers	17	165.25	Sign Shop			2577	125.00
Matron	2	24.00	Bill Posting			2578	17.62
Pages			Clean Theatre	2563	22.00		
Watchman	2	20.50	Maintenance—Repairs	2564-5-6	36.81		
Rif. Drm. & Usher	1	15.00	Booth Supplies	2560	4.00		
Superintendent			Cleaners Supplies	2567	1.76		
Painter	1	40.00	Office Supplies	2560-8	6.55		
Porters	2	34.00	Elec. Supplies				
Engineer	2	113.00	Cooling Plant Supplies				
Artist	1	65.00	" " Gas				
Maintenance Man	1	55.00	" " Water	2569	2.15		
Stage Manager	1	84.75	" Elec. Power	2552	78.73		
Electrician	2	149.50	Toilet Supplies	2567	12.94		
Asst. Electrician			Steam	2553	34.80		
Property Man	1	74.75	Electric Light & Power	2552	350.00		
Carpenter	1	74.75	Fire Alarm Service			2555	2135.00
Clearers			Lamps	2570	109.96		
Flymen			Music Scores				
Operators	6	484.50	Organ Maintenance	2571	7.50		
Stage Doorman	1	18.00	Piano Tuning	2572	5.00		
Reel Boys			Telegraph	2573	5.10		
Clk. ?? & Tel. Opr.	1	25.00	Water	2569	25.00		
Orchestra	25	1655.00	Ice, Cups and Filter Service				
Organist	1	109.25	Booking Office	2560	100.00		
Bill Poster			Detective Service				
Publicity Man	1	85.00	Express				
			Film Delivery				
Overtime			Production Exp.	2560-74	44.56		
Booth	6	55.92	Traveling Exp.				
Stage	1	5.26	Relief Mgr.				
			V. M. P. A. Dues				
			"Sound" Service Fee	2575	40.00		
			Donations	2576	59.00		
			Credit (Seat Covering)	2560	4.36		
			Miscel. Expense	2582	38.22		
Total		\$3624.43	Total		\$1952.79	Total	\$3768.12

## FILMS

M.G.M.  
 "Letty Lynton"  
 Joan Crawford and  
 Robert Montgomery  
 M.G.M.  
 Metrotone News #268  
 National Screen Service  
 Trailer—"Letty Lynton"

## ACTS

"Blue Waves" Payroll  
 Dolores, Douglas & Eddy  
 Serge Flash  
 Phelps Twins  
 Wilson, Keppel & Betty  
 Chester Hale Girls  
 Carpenter

M.L.B.A. Commission  
 Dolores, Douglas & Eddy  
 Serge Flash  
 Wilson, Keppel & Betty

Production Expense  
 Extra Stagehands (2)  
 Carloader  
 Hauling Scenery, etc.

Weather

Warm

Warm

Cool

Warm

Warm

Warm

Warm

Attendance—36,553

Personal Telegrams

Expense

Pay Roll

Trade Bills

Films &amp; Acts

Check No. 2584

Balanc

These Lines to be Left Blank

By Manager

REMARKS &amp;







**Complainants' Exhibit M.****2800 LIST OF NAMES OF OFFICERS AND DIRECTORS  
OF CORPORATIONS ENUMERATED IN DEFEND-  
ANT'S EXHIBIT L-1, AS OF THE YEAR 1932.**

The following Corporations have the same Officers and Directors:

ASTORIA THEATRE CORPORATION  
 LOEW'S BOULEVARD CORPORATION  
 CEDRIC AMUSEMENT CORPORATION  
 ARBINGDON AMUSEMENT CORPORATION  
 LOEW'S LEXINGTON, INC.  
 HUMANOVO PRODUCING COMPANY  
 NEVINS AMUSEMENT CORPORATION  
 PALACE BROOKLYN CORPORATION  
 MARCUS LOEW REALTY CORPORATION  
 LUDLOW OPERATING CORPORATION  
 HIGHBRIDGE REALTY CORPORATION  
 CONCOURSE REALTY CORPORATION  
 CENTURY-PARKWAY CORPORATION  
 CROTONA-ELSMERE CORPORATION  
 FAIRMONT THEATRE CORPORATION  
 167TH ST. AMUSEMENT CORPORATION  
 STEINWAY-38TH ST. CORPORATION  
 WOODSIDE OPERATING CORPORATION  
 CLINTON-COURT CORPORATION  
 CANTON MARKET THEATRE CORPORATION

These Officers and Directors are:

**OFFICERS**

<b>2802</b>	President	Nicholas M. Schenck
	Vice-President	David L. Loew
	Vice-President & Treasurer	David Bernstein
	Secretary	Leopold Friedman
	Ass't Secretary	Isidor Frey
	" "	Jesse T. Mills
	" "	H. Helborn
	Ass't Treasurer	Arthur M. Loew
	" "	Charles K. Stern
	" "	Charles C. Moskowitz
	" "	R. Lazarus

**DIRECTORS**

Nicholas M. Schenck  
 David L. Loew  
 David Bernstein



*Complainants' Exhibit M (continued).*

The following Corporations have the same Officers and Directors: 2803

NATOMA AMUSEMENT COMPANY  
 BERFORD AMUSEMENT CORPORATION  
 LOEW'S 86TH ST. CORPORATION  
 PUTNAM THEATRICAL CORPORATION  
 116TH ST. OPERATING CORPORATION  
 MARCUS LOEW INC.  
 READING THEATRE CORPORATION  
 DYCKWOOD AMUSEMENT CORPORATION  
 THE MARLOEW AMUSEMENT CORPORATION  
 YONKERS OPERATING CORPORATION  
 ANCHOR THEATRICAL CORPORATION  
 SALINA-JEFFERSON CORPORATION  
 INTERNATIONAL VAUDEVILLE COMPANY  
 ETON AMUSEMENT CORPORATION  
 JERSEY BOULEVARD CORPORATION  
 LOEW'S DAYTON THEATRE COMPANY  
 MASCOT AMUSEMENT COMPANY

2804

These Officers and Directors are:

## OFFICERS

President	Nicholas M. Schenck	
Vice-President	David L. Loew	
Vice-President & Treasurer	David Bernstein	
Secretary	Leopold Friedman	
Ass't Secretary	Isidor Frey	
" "	Jesse T. Mills	2805
" "	H. Helborn	
Ass't Treasurer	Arthur M. Loew	
" "	Charles K. Stern	

## DIRECTORS

Nicholas M. Schenck  
 David L. Loew  
 David Bernstein

*Complainants' Exhibit M (continued)*

2806

**BREVOORT HOLDING CO. INC.****OFFICERS**

President	Nicholas M. Schenck
Vice-President	David L. Loew
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern

**DIRECTORS**

Nicholas M. Schenck	Arthur M. Loew
David L. Loew	Leopold Friedman
David Bernstein	Edward S. Schiller

**LOMASCH THEATRE CORPORATION****OFFICERS**

President	Nicholas M. Schenck
Vice-President	David L. Loew
" "	Edward A. Schiller
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" "	Charles C. Moskowitz
" "	R. Lazarus

**DIRECTORS**

Nicholas M. Schenck	David Bernstein
David L. Loew	Isidor Frey
Edward A. Schiller	Leopold Friedman

2808

*Complainants' Exhibit M (continued).***CONEY ISLAND THEATRE INC.**

2809

**OFFICERS**

President	Nicholas M. Schenck
Vice-President	David L. Loew
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" "	Charles C. Moskowitz
" "	R. Lazarus

**DIRECTORS**

2810

Nicholas M. Schenck	David Bernstein
David L. Loew	Jesse T. Mills
Leopold Friedman	Isidor Frey

The following Corporations have the same Officers and Directors:

THE DELANCEY AMUSEMENT COMPANY  
 HILLSIDE THEATRE CORPORATION  
 WALTON-BURNSIDE AMUSEMENT CORPORATION

These Officers and Directors are:

**OFFICERS**

2811

President	Nicholas M. Schenck
Vice-President	David L. Loew
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern

**DIRECTORS**

Nicholas M. Schenck	David Bernstein
David L. Loew	Leopold Friedman

## Complainants' Exhibit M (continued):

2812

## NEW BROAD COMPANY

## OFFICERS

President	Nicholas M. Schenck
Vice-President	David L. Loew
" "	Arthur M. Loew
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
" Treasurer	Charles K. Stern
" "	Charles C. Moskowitz
" "	R. Lazarus

2813

## DIRECTORS

Nicholas M. Schenck  
 David L. Loew  
 David Bernstein

## MAIN STREET AKRON AMUSEMENT COMPANY

## OFFICERS

2814

President	Nicholas M. Schenck
Vice-President	David L. Loew
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" "	David L. Loew
" "	Charles C. Moskowitz
" "	R. Lazarus

## DIRECTORS

Nicholas M. Schenck      David Bernstein  
 David L. Loew      Arthur M. Loew  
 Leopold Friedman



*Complainants' Exhibit M (continued).***LOEW'S ATLANTA THEATRE COMPANY**

2815

**OFFICERS**

President  
 Vice-President  
 " "  
 Vice-President & Treasurer  
 Secretary  
 Ass't Secretary  
 " "  
 " "  
 Ass't Treasurer  
 " "  
 " "

Nicholas M. Schenck  
 Edward A. Schiller  
 David L. Loew  
 David Bernstein  
 Leopold Friedman  
 Isidor Frey  
 Jesse T. Mills  
 H. Helborn  
 Arthur M. Loew  
 Charles K. Stern  
 R. Lazarus

**DIRECTORS**

2816

Nicholas M. Schenck  
 David Bernstein

David L. Loew  
 Edward A. Schiller

The following Corporations have the same Officers and Directors:

LOEW'S HARRISBURG CORPORATION  
 LOEW'S HOUSTON COMPANY

These Officers and Directors are:

**OFFICERS**

President  
 Vice-President  
 " "  
 Vice-President & Treasurer  
 Secretary  
 Ass't Secretary  
 " "  
 " "  
 Ass't Treasurer  
 " "

Nicholas M. Schenck  
 Edward A. Schiller  
 David L. Loew  
 David Bernstein  
 Leopold Friedman  
 Isidor Frey  
 Jesse T. Mills  
 H. Helborn  
 Arthur M. Loew  
 Charles K. Stern

2817

**DIRECTORS**

Nicholas M. Schenck  
 David L. Loew  
 David Bernstein

*Complainants Exhibit M (continued).*

2818

## LOEW'S INDIANA THEATRES

## OFFICERS

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
Vice-President	David L. Loew
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern

## DIRECTORS

2819

Nicholas M. Schenck	Leopold Friedman
David Bernstein	Arthur M. Loew
David L. Loew	H. Helborn
Isidor Feibleman	

The following Corporations have the same Officers and Directors:

LOEW'S THEATRE & REALTY CORP.  
 PARKWAY WILMINGTON CORPORATION  
 MARCE'S LOEW BOOKING AGENCY

These Officers and Directors are:

## OFFICERS

2820

President	Nicholas M. Schenck
Vice-President	David L. Loew
" "	Edward A. Schiller
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" "	Charles C. Moskowitz
" "	R. Lazarus

## DIRECTORS

Nicholas M. Schenck  
 David L. Loew  
 David Bernstein

*Complainants' Exhibit M (continued).*

## LOEW'S N &amp; K CORPORATION

2821

## OFFICERS

President	Nicholas M. Schenck
Vice-President	David L. Loew
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern

## DIRECTORS

Nicholas M. Schenck	David Bernstein
David L. Loew	Edward A. Schiller

2822

## LOEW'S ST. LOUIS REALTY &amp; AMUSEMENT CORPORATION

## OFFICERS

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
Vice-President	David L. Loew
" "	Edward A. Schiller
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew

2823

## DIRECTORS

Nicholas M. Schenck	Leopold Friedman
David Bernstein	Nathan Frank
David L. Loew	Charles Raymond

Louis Sher

*Complainants Exhibit M (continued).*

2824

The following Corporations have the same Officers and Directors:

**DIAMOND AMUSEMENT CORPORATION  
BAY RIDGE AMUSEMENT CORPORATION**

These Officers and Directors are:

**OFFICERS**

President	Nicholas M. Schenck
1st Vice-President	Audley Clarke
3rd " "	David L. Loew
2nd Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
1st Ass't Secretary	Louis Gold
2nd " "	Jesse T. Mills
3rd " "	Isidor Frey
4th " "	H. Helborn
1st Ass't Treasurer	David L. Loew
2nd " "	Arthur M. Loew
3rd " "	Charles K. Stern
4th " "	R. Lazarus

2825

**DIRECTORS**

Nicholas M. Schenck	Audley Clarke
David Bernstein	Louis Gold

**MIDAS AMUSEMENT COMPANY****OFFICERS**

2826

President	Nicholas M. Schenck
Vice-President	David L. Loew
" "	James Ranow
" "	Max Greenwald
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern

**DIRECTORS**

Nicholas M. Schenck	James Ranow
David Bernstein	Max Greenwald



*Complainants' Exhibit M (continued).***GATES THEATRE CORPORATION**

2827

**OFFICERS**

President	Nicholas M. Schenck
Vice-President	Charles Jaffa
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" Secretary	Charles C. Moskowitz

**DIRECTORS**

Nicholas M. Schenck	David L. Loew
David Bernstein	Charles Jaffa

2828

**NEW ROCHELLE CONSOLIDATED CORPORATION****OFFICERS**

President	H. S. Brown
Vice-President	Nicholas M. Schenck
Treasurer	David Bernstein
Secretary	Wm. Mallard
Ass't Treasurer	O. R. McMahon
" "	Philip M. Stern
" "	Herman Zohbel
" "	H. E. Newcomb
Ass't Secretary	Leopold Friedman
" "	Jesse T. Mills
" "	David L. Loew
" "	Charles K. Stern

2829

**DIRECTORS***Class A*

Hiram S. Brown  
B. B. Kahane  
Wm. Mallard

*Class B*

Nicholas M. Schenck  
David Bernstein  
E. A. Schiller

*Complainants' Exhibit M (continued).*

2830

**SUTTER AMUSEMENT CORPORATION****OFFICERS**

President	Nicholas M. Schenck
Vice-President	David L. Loew
" "	Joshua Hellinger
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" "	Charles C. Moskowitz
" "	R. Lazarus

2831

**DIRECTORS**

Nicholas M. Schenck	Joshua Hellinger
David Bernstein	Robert Mintz

**EVERGREEN AMUSEMENT CORPORATION****OFFICERS**

2832

President	Nicholas M. Schenck
Vice-President	David L. Loew
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern

**DIRECTORS**

Nicholas M. Schenck	Eugene Picker
David Bernstein	

*Complainants' Exhibit M (continued).*

## LOEW'S BOSTON THEATRES COMPANY.

2833

## OFFICERS

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
Vice-President	David L. Loew
" "	Arthur M. Loew
" "	David Blum
Secretary & Clerk	John H. Devlin
Ass't Treasurer	Len Cohen
" "	Charles K. Stern
Ass't Secretary	Leopold Friedman
" "	Victor J. Morris
" "	Jesse T. Mills

## DIRECTORS

2834

Nicholas M. Schenck	Leopold Friedman
David Bernstein	Victor J. Morris
John H. Devlin	

The following Corporations have the same Officers and Directors:

CHATEAU AMUSEMENT CORPORATION  
HEMLOCK THEATRE CORPORATION

These Officers and Directors are:

## OFFICERS

President	Nicholas M. Schenck
Vice-President	David L. Loew
" "	David V. Picker
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" "	Charles C. Moskowitz
" "	R. Lazarus

2835

## DIRECTORS

Nicholas M. Schenck
David Bernstein
Eugene Picker

*Complainants' Exhibit M (continued).*

2836

## WARWICK AMUSEMENT CORPORATION

## OFFICERS

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
Vice-President	Charles B. Barkley
" "	David L. Loew
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern

2837

## DIRECTORS

Nicholas M. Schenck	Charles B. Barkley
David Bernstein	Marion J. Barkley

## LOEW'S OHIO THEATRES, INC.

## OFFICERS

2838

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
Vice-President	David L. Loew
" "	Edward A. Schiller
Secretary	Leopold Friedman
Ass't Secretary	Jesse T. Mills
" "	H. Helborn
" "	Isidor Frey
" "	E. A. Hahn
Ass't Treasurer	Charles K. Stern
" "	Arthur M. Loew
" "	Charles C. Moskowitz

## DIRECTORS

Edward A. Schiller	Nicholas M. Schenck
Leopold Friedman	David Bernstein
E. A. Hahn	David L. Loew

Jesse T. Mills



*Complainants' Exhibit M (continued).***EVANSVILLE OPERATING CORPORATION****2839****OFFICERS**

President	Nicholas M. Schenck
Vice-President	Harold B. Franklin
Secretary	William Mallard
Treasurer	David Bernstein
Ass't Secretary	Leopold Friedman
" "	David L. Loew
" "	Charles K. Stern
" "	Jesse T. Mills
" "	H. Helborn
" "	R. Lazarus
Ass't Treasurer	Herman Zohbel

**2840****DIRECTORS***Class A*

M. H. Aylesworth  
 Harold B. Franklin  
 Herman Zohbel

*Class B*

Nicholas M. Schenck  
 David Bernstein  
 E. A. Schiller

**2841**

*Complainants' Exhibit M (continued).*

2842

**TOLEDO OPERATING CORPORATION****OFFICERS**

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
Vice-President	Isidore Feebleman
" "	David L. Loew
" "	Edward A. Schiller
Secretary	Leopold Friedman
Ass't Secretary	Charles K. Friedman
" "	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" "	R. Lazarus
" "	Charles C. Moskowitz

2843

**DIRECTORS**

Nicholas M. Schenck	Charles K. Friedman
David Bernstein	Isidore Feebleman

**SUBURBAN THEATRE CORPORATION****OFFICERS**

2844

President	Nicholas M. Schenck
Vice-President	David L. Loew
" "	Myron Sulzberger
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern

**DIRECTORS**

Nicholas M. Schenck	Myron Sulzberger
David Bernstein	Rena Sulzberger

*Complainants Exhibit M (continued).***NORTH BERGEN AMUSEMENT CORPORATION****2845****OFFICERS**

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
Vice-President	David L. Loew
Secretary	Leopold Friedman
Ass't Secretary	Jesse T. Mills
" "	Isidor Frey
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" "	R. Lazarus

**DIRECTORS**

Nicholas M. Schenck  
David Bernstein  
David L. Loew

**2846**

The following Corporations have the same Officers and Directors:

**HAMFORD REALTY CORPORATION**  
**WILTHAN REALTY CORPORATION**

These Officers and Directors are:

**OFFICERS**

President	Nicholas M. Schenck
Vice-President	David L. Loew
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" "	Charles C. Moskowitz
" "	R. Lazarus

**2847****DIRECTORS**

Nicholas M. Schenck  
David L. Loew

David Bernstein  
Leopold Friedman

*Complainants' Exhibit M (continued).*

2848

## HAWTHORNE AMUSEMENT CORPORATION

## OFFICERS

President	Nicholas M. Schenck
Vice-President	David L. Loew
" "	David V. Picker
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern
" "	Charles C. Moskowitz
" "	R. Lazarus

2849

## DIRECTORS

Nicholas M. Schenck  
David L. Loew  
David Bernstein

## PROVIDENCE THEATRICAL CORPORATION

## OFFICERS

2850

President	Nicholas M. Schenck
Vice-President	David L. Loew
Vice-President & Treasurer	David Bernstein
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
" "	Chas. C. Moskowitz
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern

## DIRECTORS

Nicholas M. Schenck  
David L. Loew  
David Bernstein



*Complainants' Exhibit M (continued).*

LOEW-UNITED ARTISTS CORPORATION  
(Columbus, Ohio)

2851

**OFFICERS**

President  
Vice-President & Treasurer  
Vice-President  
Secretary  
Ass't Treasurer  
" "  
" "  
" "  
Ass't Secretary  
" "

Nicholas M. Schenck  
David Bernstein  
David L. Loew  
Leopold Friedman  
Arthur M. Loew  
R. Lazarus  
Charles K. Stern  
C. C. Moskowitz  
Isidor Frey  
H. Helborn  
Jesse T. Mills

2852

**DIRECTORS***Class A*

Nicholas M. Schenck  
David Bernstein  
David L. Loew

*Class B*

Dennis F. O'Brien  
William P. Phillips  
Harry D. Buckley

2853

*Complainants' Exhibit M (continued).*

2854

## LOUISVILLE OPERATING COMPANY, INC.

## OFFICERS

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
Vice-President	David L. Loew
Secretary	Leopold Friedman
Ass't Treasurer	Arthur M. Loew
" "	David L. Loew
" "	Charles K. Stern
Ass't Secretary	Jesse T. Mills
" "	Hattie Helborn

## DIRECTORS

*Class A*

Nicholas M. Schenck  
David Bernstein  
David L. Loew

*Class B*

Dennis F. O'Brien  
William P. Phillips  
Harry D. Buckley

2855

## BALTIMORE CONSOLIDATED CORPORATION

## OFFICERS

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
" "	David L. Loew
" "	Edward A. Schiller
" "	Harry M. Warner
Secretary	Leopold Friedman
Ass't Secretary	Jesse T. Mills
" "	Isidor Frey
" "	H. Helborn
" "	Stanleigh P. Friedman
Ass't Treasurer	Arthur M. Loew
" "	Charles K. Stern

2856

## DIRECTORS

Nicholas M. Schenck      Edward A. Schiller  
David Bernstein      Stanleigh P. Friedman  
Harry M. Warner

*Complainants' Exhibit M (continued).*

## THE STATE THEATRE CO.

2857

## OFFICERS

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
Vice-President	David L. Loew
" "	E. A. Schiller
" "	Arthur M. Loew
" "	David Blum
Secretary	John H. Devlin
Ass't Treasurer	Len Cohen
" "	Charles K. Stern
Ass't Secretary	Leopold Friedman
" "	Jesse T. Mills
" "	Victor J. Morris

2858

## DIRECTORS

Nicholas M. Schenck	Victor J. Morris
David Bernstein	John H. Devlin
Leopold Friedman	

## NORFOLK CONSOLIDATED CORPORATION

## OFFICERS

President	Nicholas M. Schenck
Vice-President	Walter Vincent
Secretary	Jos. Egan
Treasurer	Sidney Wilmer
Ass't Secretary	Leopold Friedman
" "	Jesse T. Mills
" "	H. Helborn
Ass't Treasurer	David Bernstein
" "	David L. Loew
" "	Charles K. Stern

2859

## DIRECTORS

Nicholas M. Schenck	Walter Vincent
E. A. Schiller	Sidney Wilmer

*Complainants' Exhibit M (continued).*

2866

**RICHMOND CONSOLIDATED CORPORATION****OFFICERS**

President	Sidney Wilmer
Vice-President	Nicholas M. Schenck
Ass't. Vice-President	Jesse T. Mills
" " "	H. Helborn
" " "	David L. Loew
" " "	Charles K. Stern
Secretary	Leopold Friedman
Treasurer	David Bernstein
Ass't Secretary	J. J. Murdock
Ass't Treasurer	Sidney Wilmer
" "	Walter Vincent
" "	Joseph Egan

2861

**DIRECTORS**

Sidney Wilmer	Nicholas M. Schenck
Walter Vincent	E. A. Schiller

**PENN-FEDERAL CORPORATION****OFFICERS**

2862

President	Nicholas M. Schenck
Vice-President & Treasurer	David Bernstein
Vice-President	David L. Loew
" "	Edward A. Schiller
Secretary	Leopold Friedman
Ass't Secretary	Isidor Frey
" "	Jesse T. Mills
" "	H. Helborn
" "	Charles K. Stern
Ass't Treasurer	Charles C. Moskowitz
" "	R. Lazarus
" "	Arthur M. Loew



*Complainants' Exhibit M. (continued).***DIRECTORS**

2863

Nicholas M. Schenck  
David Bernstein

Leopold Friedman  
David L. Loew

**WILLARD AMUSEMENT CORPORATION****OFFICERS**

President  
Treasurer  
Secretary

H. Klay Miner  
A. H. Schwartz  
S. D. Holiner

**DIRECTORS**

H. Klay Miner  
James T. McAllister

A. H. Schwartz  
John Reis

2864

David Schlein

**CONWALL REALTY CORPORATION****OFFICERS**

President  
Vice-President  
Treasurer  
Secretary

H. Klay Miner  
James T. McAllister  
A. H. Schwartz  
S. D. Holiner

**DIRECTORS**

2865

H. Klay Miner  
A. H. Schwartz  
S. D. Holiner

James T. McAllister  
Dr. R. M. Beach  
David Schlein

John Reis

We have been unable to obtain the names of the Officers and Directors of the following Corporations:

LOEW'S LONDON THEATRES, LTD.

MARCUS LOEW'S THEATRES, LTD.

## Report of Special Master.

2866

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[SAME TITLE.]

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### APPEARANCES:

For Complainants, O'BRIEN, DRISCOLL & RAFTERY; by Arthur F. Driscoll, Esq. and Edward J. Clarke, Esq.

For Defendants, Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation, J. ROBERT RUBIN, Esq., by Samuel D. Cohen, Esq., Walter H. Pollak, Esq. and Earle L. Beatty, of Counsel.

2867

And at hearings in California, LOEB, WALKER & LOEB, Esqs., by Milton H. Schwartz, Esq. and Walter S. Hilborn, Esq.

For Defendant, Culver Export Corporation, SAMUEL D. COHEN, Esq.

For Defendant, Loew's, Inc., LEOPOLD FRIEDMAN, Esq.

The decree of the United States District Court signed by Judge John C. Knox and filed in this case on July 31, 1936, states:

2868

"That the above defendants and each of them have infringed and violated the said copyright and the exclusive rights of said complainants vested in them under the aforesaid copyright."

It then states the manner in which this has been done, as follows (the arrangement is mine):

1. "by copying the complainants' aforesaid dramatic composition;"
2. "by manufacturing therefrom a certain talking motion picture entitled 'Letty Lynton'."

*Report of Special Master.*

3. "by distributing or selling to third parties licenses to exhibit said talking motion picture 'Letty Lynton' throughout the United States and its possessions and elsewhere." 2869
4. "by giving and causing to be given or aiding and abetting in the giving of public performances and representations for profit of complainants' dramatic composition 'Dishonored Lady' by means of giving or causing to be given or aiding and abetting in the giving of public performances and representations of the aforesaid talking motion picture 'Letty Lynton', and by otherwise trafficking in and dealing with complainants' dramatic composition for profit throughout the United States of America and other portions of the world." 2870

The decree then goes on to state:

"That the complainants recover of the defendants and each of them all damages sustained by them and that the complainants recover of the defendants and each of them all gains and profits made by the defendants and each of them because of the said infringement upon complainants' copyright."

in the manner above described.

2871

The decree then proceeds to define my duties as Special Master by instructing me:

"to ascertain and report the amount of complainants' damages herein and the amount of such gains and profits of the defendants and each of them, and in addition, the Special Master shall report separately the amount of such gains and profits of the defendants obtained from all sources outside of the United States."

*Report of Special Master.*

Section 25 of the Copyright Act, in defining the liability of a person who has infringed a copyright, states in paragraph (b) in part as follows:

"To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the court shall appear to be just."

Complainants in this case are asking for profits. The accounts which I have taken establish clearly what the sales of this picture were and the defendants have introduced in evidence voluminous records and testimony respecting every element of cost which they claim.

Every element of cost which I have found to be proper, including a substantial allowance for overhead, has been deducted from the gross amount received by the defendants through the use of the complainants' copyrighted work in the various manners described in the order above referred to.

The first hearing before me as Special Master was held on September 9, 1936. A subsequent hearing was held on October 21, 1936; then followed four adjournments and the next hearings were held on November 20, 1936, December 2, 1936 and December 11, 1936, which hearing was followed by several adjournments; the next hearing being held on February 1, 1937.

It had become apparent, as a result of the aforementioned hearings, that competent testimony respecting the accounting of the defendants herein could not be secured unless either the defendants produced in New York a large number of witnesses and a staggering amount of records from defendants' production studio at Culver City, California,



*Report of Special Master.*

or the hearings before me as Special Master be moved to Culver City, California, and continued there. Faced with the expense and inconvenience of transporting witnesses and records from California to New York, the defendants agreed to pay the travelling and living expenses of the Special Master and of counsel for the complainants and his assisting accountant to and from California. Accordingly, the next hearing in this matter was held in Culver City, California, on March 1, 1937.

2875

Hearings were held daily in California, except Sundays, and one intervening day, from March 1st to and including March 8, 1937, and the testimony taken at said hearings is separately bound with the testimony filed herein and is entitled "Culver City Testimony".

2876

Hearings were again resumed in my office in New York on April 20, 1937, April 21, 1937, April 23, 1937, May 5, 1937, May 6, 1937, May 7, 1937, May 17, 1937, May 24, 1937, June 16, 1937, June 28, 1937, June 30, 1937, July 6, 1937, July 9, 1937, August 11, 1937, September 30, 1937 and October 5, 1937.

After the closing of the hearings on October 5, 1937, and after I had had an opportunity to read over the record, the attorneys for both sides appeared before me and argued certain points of law and discussed with me at length the facts presented. These conferences took place on November 22, November 23 and November 26, 1937. I then began the drafting of this report and on December 16, 1937, again had an extended conference with the attorneys for both sides regarding various controversial questions. After this, I resumed the drafting of this report and again on February 7, 1938, conferred with counsel for both sides.

2877

As a result of certain contentions made during these conferences by the complainants, the defendants requested an opportunity to present certain additional testimony, and accordingly I permitted the hearings to be reopened and a final hearing was held on March 16, 1938.

The testimony taken in New York is filed herein in two

*Report of Special Master.*

78 volumes, pages 1 to 519 being volume 1 and pages 520 to 1240 being included in volume 2.

It may be noted here that Complainants' Exhibits are in one series, with alphabetical designations A to M, both inclusive, with addition of arabic numerals where exhibits consist of more than one sheet, and that the Defendants' Exhibits are in four series; first, those introduced in New York in connection with general accounting marked simply with arabic numerals 1 to 34, with addition of letters and numbers where exhibits consist of more than one sheet; second, those introduced in Culver City, California, in connection with general accounting marked with arabic numerals prefaced by letter "C", C-1 to C-34; third, those introduced in connection with the accounting on behalf of the defendant Loew's Incorporated, marked L-1 to L-15, inclusive, and, fourth, there were references to testimony and to exhibits which either appear in the printed record of the case in the United States Circuit Court of Appeals, or were submitted (unprinted) to that Court as a part of that record. All such references either to testimony or to exhibits are numbered consecutively. References 1-18, inclusive, and in the case of exhibits introduced from such printed record, there were superadded exhibit numbers R-1 to R-7, inclusive.

80 There are filed herewith also the following memoranda submitted to me:

1. Complainants' memorandum.
2. Defendants' memorandum.
3. Complainants' reply memorandum.
4. Defendants' reply memorandum.
5. Additional complainants' memorandum on six items having to do with overhead.
6. Defendants' memorandum on certain items of overhead.

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7. Further memoranda by complainants on correct ratio of general overhead. 2881
8. Comparative analyses of play and picture, trial and play, submitted by defendants.
9. Complainants' memorandum opposing proposal to divide Loew's profits in vaudeville theatres, one-third to vaudeville and two-thirds to "Letty Lynton".
10. Memorandum by defendants re Exhibit L-14 and testimony of Vogel.

The complainants also submitted to me, to be used by me in reading their original memorandum above referred to, several groups of photostatic copies of certain exhibits with notations made therein by complainants' counsel indicating objections to certain items on these exhibits and giving cross references to the complainants' memorandum which detailed the reasons for these objections. 2882

It may be noted here that defendants' original exhibits numbered 1, 2, 3, 4, 5, 6, 7 and 8 may be disregarded *in toto* inasmuch as during the course of the hearings they were superseded by other exhibits and testimony.

1. Apparently, from the testimony before me, the motion picture business divides itself into three distinct parts or operations: 2883

(a) Production, or making of the picture, including hiring of cast and securing of sets, costumes, literary material, the actual photography, (generally referred to as "shooting" the picture), and the development of the negative of the picture.

(b) Distribution, which includes the leasing of positive prints of the picture to theatre owners or operators (generally referred to as exhibitors), for exhibition in their respective theatres. Distribu-

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tion is generally made through a corporation maintaining branches (referred to as exchanges) in the different key cities throughout the country; and

(c) Exhibition, or the actual showing of the picture on the screen to the public by the owner or operator of a theatre.

2. The motion picture "Letty Lynton" was produced by Metro-Goldwyn-Mayer Corporation. It was thereafter turned over to Metro-Goldwyn Pictures Corporation at cost. Metro-Goldwyn Pictures Corporation turned over the picture to Metro-Goldwyn-Mayer Distributing Corporation for domestic distribution, upon an arrangement whereby the Distributing Company was to pay to the Pictures Corporation 80% of the gross receipts or proceeds received from the rental of said picture to exhibitors (Defendants' Exhibits 17, 18, 19).

Thereafter the Distributing Company rented the picture to exhibitors throughout the United States and its possessions, and paid to Metro-Goldwyn Pictures Corporation 80% of the gross receipts (Defendants' Exhibit 19).

The picture was also turned over by Metro-Goldwyn Pictures Corporation to Culver Export Company for foreign distribution, and to Regal Films, Ltd., for Canadian distribution. Culver Export Corporation in turn distributed it abroad (excepting Canada) through wholly owned foreign subsidiaries (except in Sweden), which in turn paid to Culver Export Corporation a percentage of the gross receipts varying with the different foreign subsidiaries (Defendants' Exhibits 17, 20, 21).

3. The picture was distributed in Canada through a contract with the Regal Films, Ltd., a Canadian corporation, not owned or controlled by any of the defendants, and the proceeds received by the Pictures Corporation from said Regal Films, Ltd., are accounted for by the Pictures Corporation (Defendants' Exhibit 18, N. Y. S. M., 375).

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*Report of Special Master.*

4. A separate account has been filed by each defendant named in this action. 2887

An account was filed by Metro-Goldwyn Pictures Corporation which included the 80% of the rentals received by Metro-Goldwyn Pictures Corporation from the Metro-Goldwyn-Mayer Distributing Corporation, and took as a deduction against said rentals, the cost of the making of the picture by the Producing Company (Defendants' Exhibit 18).

An account was filed by Metro-Goldwyn-Mayer Distributing Corporation which accounted for the 20% of the gross rentals retained by the Distributing Corporation (Defendants' Exhibit 19).

An account was filed by the Culver Export Corporation which accounted for the part of the proceeds derived from foreign distribution received by Culver Export Corporation from its foreign subsidiaries (Defendants' Exhibit 20). 2888

An account was filed on behalf of the foreign subsidiaries which accounted for the portion of the gross receipts from foreign rentals retained by those foreign subsidiaries (Defendants' Exhibit 21).

An account was filed by Loew's, Inc., which accounted for the profits of all of the Loew Theatres in which the said picture was exhibited (Defendants' Exhibits L-6—L-13, both inclusive).

5. The corporation organization chart as of August 31, 1932, appears as Defendants' Exhibit 17. This shows that Loew's, Inc., owned at that time 100% of the stock of the MGM Company, Inc., and that the MGM Company, Inc., owned 100% of the common stock of Metro-Goldwyn Pictures Corporation. The Metro-Goldwyn Pictures Corporation preferred stock was listed on the New York Stock Exchange and about 10% of it was owned by Loew's, Inc. Metro-Goldwyn Pictures Corporation in turn owned all of the capital stock of the Metro-Goldwyn-Mayer Distributing Corporation (domestic distributor), Metro-Goldwyn- 2889

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2890 Mayer Corporation (producer) and the Culver Export Corporation.

6. The decree above quoted instructs the Special Master to "report separately the amount of such gains and profits of the defendants obtained from all sources outside of the United States". This, in effect, means that the account of the defendant, Culver Export Corporation and the account of its foreign subsidiaries are to be separately examined.

I shall now consider the accounting of the defendants, Metro-Goldwyn Pictures Corporation, Metro-Goldwyn-Mayer Distributing Corporation and Loew's, Inc.

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### ACCOUNTING OF METRO-GOLDWYN PICTURES CORPORATION.

(HEREINAFTER CALLED PICTURES CORP.).

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1. The total film rental income of the Pictures Corp. from "Letty Lynton", excluding Canada, is stated in Defendants' Exhibit 18 to be \$727,053.84 and since there is no dispute about this item, I find it as a fact. In accounting for this sum of money, Pictures Corp. credits itself (see Defendants' Exhibit 18) with the sum of \$145,410.77, which amount was retained by Metro-Goldwyn-Mayer Distributing Corporation, representing 20% of the gross film rental income, and this amount is accounted for in the account of the Metro-Goldwyn-Mayer Distributing Corporation hereinafter referred to. The net film rental income, therefore, to be accounted for by Pictures Corp. amounts to \$581,643.07.

2. The Pictures Corp. claims that it should be allowed as a credit an item of \$12,505.33, representing what it calls the share of the distributing expense that "Letty Lynton"

*Report of Special Master.*

should be charged with. The way it arrives at this sum is to take its total film rental income (excluding Canada), which amounted during the year in question to \$30,020,526.08 and deduct from that 20% thereof, which was retained by Metro-Goldwyn-Mayer Distributing Corporation, arriving at a net film rental income of \$24,016,420.86. It then lists its home office expenses (Defendants' Exhibit 18-B), which expenses total \$1,872,601.74, and deducts from this amount the reimbursement it received from Metro-Goldwyn-Mayer Distributing Corporation of \$1,304,984.38, leaving a net home office expense figure of \$567,617.36. It adds to this depreciation on its equipment in the home office, amounting to \$14,927.54, or a total alleged distributing expense of \$582,544.90. It credits against this sum trailer income and miscellaneous income amounting to \$66,513.27, arriving at a total distributing expense of \$516,031.63, and this it finds to be 2.15% of the net film rental income. It then applies this ratio to the net film rental income of "Letty Lynton" and reaches the figure of \$12,505.33. The claim of the defendants of this amount as an allowance of overhead in connection with the distribution is based, of course, on the relation of cost of distribution to gross receipts. The complainants object to this allowance and claim that the Pictures Corp. is simply a holding company and not concerned with distribution. It seems clear to me from the testimony taken in New York (S. M. 354) that the home office expense listed on Defendants' Exhibit 18-B was expense of distribution and that the accounting practice of the group of companies was such as to charge the Pictures Corp. with the sum indicated above. However, I do not agree with the method employed by the defendants in arriving at the proper charge to be made against the picture "Letty Lynton" as a part of the overhead connected with the distribution of defendants' pictures. I shall disallow this item and allow a credit of distribution expense to this defendant in this accounting in the amount of \$8,517.48. My reason for the

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2896 disallowance of the defendants' claim of \$12,505.33 and the allowance in lieu thereof of \$8,517.48 will be set forth at length when I consider the accounting filed herein by the Metro-Goldwyn-Mayer Distributing Corporation, which accounting is set forth in Defendants' Exhibit 19.

3. On Defendants' Exhibits numbered 18-D-1, 2, 3 and 4 are listed what may be termed, with the exceptions hereinafter noted, direct, clearly identifiable costs of production of the picture "Letty Lynton". I find that the following of these items are proper credits to the Pictures Corp. in this accounting and accordingly I allow them. There is no controversy between the parties as to the propriety of  
2897 allowing these credits.

## Direction:

Compensation paid to Clarence Brown	\$75,000.00
Compensation paid to James Basevi, Director of Miniature Department	575.42

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\$75,575.42

Production Manager and Assistants	582.52
Assistant Director and Clerks	2,043.91

Compensation paid to Cameramen and Assistants, representing compensation paid to 24 individuals	4,185.63
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2898 Editors and Cutters	2,789.49
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## Compensation paid to Stock Talent:

Joan Crawford	\$16,916.68
Robert Montgomery	7,500.02
Nils Asther	2,400.00
Helen Robinson	17.51

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Lewis Stone	1,125.00	2899
Karen Morley	41.66	
Belle Donovan	20.00	
Ruth Holly	25.01	
Nika Justin	15.00	
Walda Mansfield	33.32	
Gladys Mason	11.66	
Betty Sanford	20.00	
Ruth Renick	8.33	

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\$28,134.19

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## Compensation paid to Picture Talent:

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May Robson	\$ 2,833.32
Louise C. Hale	3,000.00
Commission	30.17

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\$ 5,863.49

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Extra Talent including salaries and the fees  
of the Central Casting Office

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\$11,152.75

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## Compensation paid for story:

Wanda Tuchok	\$ 2,333.33	2901
John Meehan	23,333.34	
D. Taylor	1,866.66	
Mitzi Cummings	52.50	
Book cost	3,850.00	
Miscellaneous expense	5.64	
Scrip expense	554.67	

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\$31,996.14

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*Report of Special Master.***2902 Wardrobe—Womens:**

Purchased	\$ 186.95
Studio construction	4,618.34
Outside rentals	200.00
Studio altering, fitting, etc.	1,094.01
Damage and loss	.50
Transportation	68.19
Laundry and cleaning	90.42
Repairs by prop. shop	3.85
Make-up	251.01
	<hr/>
	\$ 6,513.87

**2903****Wardrobe—Mens:**

Purchased	\$ 150.00
Outside rentals	181.63
Studio altering, fitting, etc.	530.12
Laundry and cleaning	70.58
Transportation	18.11
Make-up	282.44
	<hr/>
	\$ 1,232.88

**2904****Lighting:**

Lining sets—salary	\$ 847.52
Operation sets—salary	2,077.16
Striking sets—salary	268.18
Supplies and expense	47.14
Rent outside electric equipment	206.47
Operation of power plant	21.00
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	\$ 3,447.47

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## Automobiles and truck hire:

2905

Company equipment \$ 372.49

Outside rentals 264.93

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\$ 637.42

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Meals and lodging \$ 19.85

Meals—company restaurant 182.35

## Location expense:

Salary and location man 20.79

Negative raw stock 5,142.80

Negative processing 1,243.78

Positive raw stock 3,677.91

Positive processing 2,614.54

Titles 87.49

Publicity salaries 3,179.64

Stills 1,153.93

Workmen's compensation insurance 803.49

Special shots 1,288.55

Miscellaneous unclassified expense 1,522.07

Recording charges 6,558.00

Re-recording charge 940.78

Music 956.42

Musicians 1,704.98

## Cost of sets:

2906

The names of the sets are listed and the labor cost and material cost of each set is specified and these items amount in the aggregate to

33,144.90

An additional item was added subsequently amounting to

52.75

The total of all these items is

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\$238,649.30



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2908

4. Complainants contend that a credit amounting to \$2,000 claimed by the defendants representing the salary of Joan Crawford, one of the stars in the picture, for her idle time between the finishing of the previous picture and the beginning of work on "Letty Lynton" is improperly claimed as a credit by the defendants. A similar item amounting to \$2,500 in the case of Robert Montgomery is also objected to by the complainants (C. C. S. M., 47-51). I find, however, on the authority of *Duplate Corporation v. Triplex Safety Glass Company*, 298 U. S. 448, that the evidence as reflected in this particular case of the amounts paid to these two stars and charged against this picture for their idle time between the finishing of their previous picture and the beginning of their work in "Letty Lynton" indicates that these payments should be regarded as reasonable costs in the production of "Letty Lynton". Accordingly, I allow these credits to the defendants, amounting in the aggregate to \$4,500.00.

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5. Listed in Defendants' Exhibits 18-D-1, 2, 3 and 4 are certain departmental overheads, which appear to have been charged on the books of the company and which are objected to by the complainants.

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In the Camera Department an item of \$1,045.17 is claimed as a credit by the Pictures Corp. and represents an overhead charge figured at 25% of the wages of the men who actually worked on this picture in the Camera Department (C. C. S. M., 37-41).

In the Editors and Cutters Department an item of \$221.57 is claimed as a credit for overhead, which represents 8% of the direct charges for labor and materials (C. C. S. M., 44).

An overhead charge of \$896.05 is claimed as a credit in the Stock Talent Department and is figured on 25% of the cost of the stock talent in the picture, exclusive of Crawford and Montgomery, and is an arbitrary figure set up on the books of the company each year (C. C. S. M., 52-53).

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The departmental overhead claimed as a credit in connection with the Scenario Department amounted to \$3,310.50 and this was figured on a basis of 12% of the writers' salaries working on the particular picture involved (C. C. S. M., 57, 58).

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The departmental overhead claimed as a credit in connection with the Musicians Department amounted to \$610.76 and this was figured on a basis of 23% of the labor of musicians working on the picture (C. C. S. M., 67).

The method used in figuring overhead in the Womens Wardrobe Department amounting to a sum of \$2,500, was that the head of the department "prorated weekly on the basis of his knowledge of the wardrobe operation over the pictures in process". His proration was not based on any total disbursements or any total of labor costs or any total of any kinds of costs but the proration was done according to his judgment (C. C. S. M., 135).

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The method of estimating the overhead in the Lighting Department is identical with the departments other than the Womens Wardrobe Department, that is, it was calculated on a percentage of the direct labor cost and the percentage used was 8%, resulting in a figure of \$275.71 (C. C. S. M., 61).

As to these claims for credit for departmental overhead based on labor and materials made on the books of the company in the regular course of business, I find that they should be allowed to the defendants as reasonable charges. They total \$6,359.56. This leaves to be considered, with respect to these departmental overhead charges, one item only, that is, a charge of \$2,500 in Womens Wardrobe Department described above. The method employed in fixing this charge was the judgment of the head of the department and it resulted in an over absorption of overhead in that particular department in the aggregate amounting to \$3,593.52 (C. C. S. M., 60). I shall disallow this item as not having been based on the cost of labor and materials used in this department. I shall deal with the overhead of

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*Report of Special Master.*

2914 the Womens Wardrobe Department hereafter in considering the subject of the general studio overhead.

6. On Defendants' Exhibit 18-D-3 credits are claimed by the defendants for expenditures in connection with negative and positive raw stock and negative and positive processing. I have corrected those referring to the negative and positive processing to eliminate all profit, pursuant to the testimony of Mr. Craig, the defendants' accounting officer, found in the testimony taken at Culver City (C. C. S. M., 483-4) and the corrected amounts are included in the items appearing above which I have allowed as credits to the defendants. There is clearly no reason why the picture "Letty Lynton" should be charged with any profit to the defendants in these items of negative and positive processing and accordingly I disallow the items appearing on Defendants' Exhibit 18-D-3 under the heading "Negative Processing and Positive Processing" to the extent that any profit is included therein according to the testimony of Mr. Craig (C. C. S. M., 483-4).

7. Complainants object to the publicity salaries item claimed as a credit on Defendants' Exhibit 18-D-3. This item amounts to \$4,206.10. Complainants take the position that either this item should be entirely eliminated or it should be turned into the general overhead. I shall allow this item as a credit on the basis of the testimony of Mr. Craig (C. C. S. M., 145) to the effect that the formula adopted by the management was to divide the publicity cost 70% to the pictures actually in production and 30% to pictures in preparation or upon which production had finished but release had not taken place. Mr. Craig's testimony, which was uncontradicted, is that there is more demand for publicity in connection with a picture while it is in the "shooting" stage than after the production is completed. I do not think that this allocation can be considered unreasonable or arbitrary and, accordingly, I allow

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the item as a credit. Expenditures for publicity of this sort must be regarded as a part of the cost of "Letty Lynton". (*Metallic Rubber Tire Company v. Hartford Rubber Co.*, 275 Fed. 315 at 323.) 2917

8. On Defendants' Exhibit 18-D-4 appears an item "Construction Supervision" amounting to \$3,704.65, which is claimed by the defendants as a credit. It appears from the testimony (C. C. S. M., 86, 87, 88) that the Construction Department, Property Department and Art Department were all concerned with the manufacture of the sets for the picture "Letty Lynton". The Art Department designs the sets and prepares the blueprints, the Construction Department builds the sets, and the Property Department dresses the sets. The item of \$3,704.65 represents the part of the departmental overhead of these three departments which the defendants claim should be charged against the picture "Letty Lynton". The testimony further shows that 65% of the direct cost in the Art Department was added for overhead (C. C. S. M., 87); that the overhead charged in the Property Department was 14% of the direct cost, and that 5% of the cost of the construction work was added for overhead in the Construction Department. While I am rather shocked at the 65% charge in the Art Department, I shall allow the defendants as a credit in this accounting this item of Construction Supervision amounting to \$3,704.65 since I find from Defendants' Exhibit 18-D-4 that the total cost of sets eliminating this item of overhead was \$33,144.90 and I find a charge of approximately 11% for overhead as a direct cost of the production of these sets is not unreasonable. 2918

9. This brings me to a consideration of Defendants' Exhibit 18-D-5 and first to a determination as to whether the items listed under the caption "General Studio Overhead" and totalling \$5,891,374.57 are proper in arriving at the final figure of General Studio Overhead as stated. 2919



## Report of Special Master.

2920 I shall first consider the item of Studio Overhead amounting to \$2,246,793.28 listed in Defendants' Exhibit 18-D-5 and detailed in schedule in Defendants' Exhibit 18-E-1 and 18-E-2. The following items appear on Defendants' Exhibit 18-E-1 as debits and credits and which are included in the item \$2,246,793.28 above referred to and are not objected to by the complainants except that complainants object to the allowance of any 'Studio Overhead':

	Dr.	Cr.
Salaries—Accounting Department	\$100,421.33	
2921 Expenses—Accounting Department	21,309.88	
Salaries—Production Department	72,346.20	
Expenses—Production Office	2,368.15	
Salaries—Casting Office	41,600.32	
Expenses—Casting Office	35,210.19	
Salaries—Projection Department	2,225.51	
Expenses—Projection Department	31.42	
Salaries and Expenses — Business Office	48,847.61	
Drayage and Auto Hire	1,748.47	
Plant, Engineering and Planning	50,660.93	
Expense of Personnel Department	220.63	
Maintenance—Repair of Buildings	32,553.44	
2922 Repair and Maintenance of Facilities	151,527.64	
Railway Transportation	2,054.97	
Mailing Expense	11,058.40	
Printing and Stationery	14,745.02	
Stock Library Expense	16,298.66	
Fan Mail Expense	2,514.53	
New York Office Expense in Connection with Production	151,125.59	
Stamp Tax	432.72	
Film Rentals for Studio Showing	3.05	
Heating and Ventilation	6,357.82	

97.5  
*Report of Special Master.*

	Dr.	Cr.	2923
Button Deposit		18.00	
Salvage Yard		9.41	
Dues	24,765.60		
Freight & Handling		7,809.33	
Telephone Expense	86,677.60		
Telegraph Expense	8,651.48		
Executive Dining Room Expense	8,485.20		
Flowers for Executive Office	702.61		
Private Dining Room in Commissary	1,501.43		
Income from Use of Flowers		4,011.45	
Adjustment of Overhead for year ended 8/27/31		9,910.89	2924
	\$896,446.40	\$21,759.08	

10. I shall now consider the items of Studio Overhead listed in Defendants' Exhibit 18-E-1 to which specific objection has been made by the complainants.

In objecting to the first two items appearing on Defendants' Exhibit 18-E-1, that is, Salaries and Expenses of the Executive Department, complainants refer to the testimony of Mr. Craig (C. C. S. M., 187-199) from which it appears that the salaries of those executives, assistants, secretaries and stenographers, any part of whose time or labor was directly concerned in the making of "Letty Lynton", and which salaries are included in the first item on Defendants' Exhibit 18-E-1, only amount to \$403,000 and that the balance of this sum of \$1,047,599.43 that is \$644,599.43 is made up of salaries of executives and their assistants, secretaries and stenographers who were not in any way connected with the making of "Letty Lynton" and therefore this should not be included in the Studio Overhead in which "Letty Lynton" should share. It is important to keep clearly in mind that at this point I am trying to determine the amount of the General Studio Overhead. Later, I shall

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*Report of Special Master.*

2926 determine what proportion of the General Studio Overhead should be shared by the picture "Letty Lynton".

I have no hesitation in saying that the total salaries and expenses of the Executive Department are a part of the studio overhead inasmuch as these salaries and expenses undoubtedly represent a part of the general expenses of carrying on this business. If the complainants' contention is accepted and the sum of only \$403,000 is considered as a part of the General Studio Overhead, it is perfectly clear that the General Studio Overhead will be incorrectly stated to the extent of \$644,599.43 (and the expenses of the Executive Department amounting to \$16,482.79). Accordingly, I reject the complainants' contention that in establishing the amount of the General Studio Overhead the salaries of only such of the executives, assistants, secretaries and stenographers as the testimony shows spent some time or labor in connection with the picture "Letty Lynton" should be included and I allow as a part of the General Studio Overhead the amount of all of the salaries and expenses of the Executive Department as listed in the first two items of Exhibit 18-E-1, that is, \$1,047,599.43 and \$16,482.79.

2928 11. Complainants object to an item of \$2,745.00, which is included in the item "Salaries Maintenance" of \$123,602.31 appearing on Defendants' Exhibit 18-E-1. This sum of \$2,745.00 appears to represent unassigned salaries of doctors and nurses (C. C. S. M., 210-212). It appears from the testimony (C. C. S. M., 212) that the company maintained on the lot a first aid station and a nurse who was always in attendance and who was available for call on any production that needed her services on the lot. It seems clear to me that, even though there is no proof that doctors and nurses were used in connection with the production of "Letty Lynton", this is a proper overhead charge of an organization of this sort.

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12. The next two items to which complainants object in this schedule are the Legal and Other Expenses re Patent Rights \$2,060.52 and Legal Salaries and Expense \$30,573.43. While these items had nothing to do with the production of "Letty Lynton" (C. C. S. M., 206-217) they were for general corporation work. These items I hold to have been properly included in General Studio Overhead.

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13. The next item objected to by the complainants is the item entitled Rental of Studio and Facilities amounting to \$334,464.61. This item represented part of the depreciation as explained by Mr. Mills in his testimony (N. Y. S. M., 188-189). The total depreciation of the Los Angeles studio, equipment and buildings is shown on Defendants' Exhibit 9 as amounting to \$520,631.21. This item appears on Defendants' Exhibit 18-10-5. I shall eliminate this item from this schedule and will consider it hereafter at the same time that I consider the question of the investment in the studio plant and equipment and the item entitled "Interest Paid".

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14. Insurance General amounting to \$33,635.91 and objected to by the complainants, and Insurance Miscellaneous Compensation totalling \$54,051.30, and Taxes, City, County and State \$72,461.51, I hereby allow as part of the General Studio Overhead under the authority of *Gordon v. Turco-Halbrah Co.*, 247 Fed. 487.

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15. The three items: Losses not covered by Insurance \$496.65; Entertainment \$8,440.23 and Donations \$6,928.99 referred to in the testimony (C. C. S. M., 221-223 and 251-252) were in no direct way connected with the production of "Letty Lynton". A substantial amount of the entertainment expense was incurred in giving a dinner to Vice President Curtis and in giving a dinner to the Olympic athletes. The donations were voluntary or charitable contributions made by the defendants. These were expenses of



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2932 the business actually incurred in good faith and though the complainants may claim they were improvident, nevertheless, they are a part of the General Studio Overhead of the business (*Larson v. Wrigley*, 20 F. [2d] 830, 832) and accordingly I allow them.

16. I find that the item Salaries of Directors, Unassigned \$27,715.49 to which complainants object, should be allowed as a proper part of the General Studio Overhead. This item may be supported by the reasoning in *Duplate Corporation v. Triplex Safety Glass Co.*, 298 U. S. 448 and by remarks made in paragraph numbered 10, *supra*, and under the doctrine of *Larson v. Wrigley*, *supra*.

2933 17. The items which go to make up the Miscellaneous Unclassified Expense item of \$19,357.06 while having nothing directly to do with the production of the picture "Letty Lynton" there is no evidence in the record to show that they should be charged to any other particular picture produced by the defendants. They are properly chargeable to the General Studio Overhead as general expenses of the studio and I allow the entire item.

2934 18. With respect to the items "Rejected Continuity Charges and Songs" amounting to \$63,996.57 and Accumulations on Rejected Pictures amounting to \$151,686.80 which are described in C. C. S. M., 229-230, these songs and music and pictures which were not used during the fiscal year were charged into the overhead for that year by the defendants, and complainants object to this procedure on the grounds that the sums in question were payments made for rejected continuities and songs that had nothing to do with "Letty Lynton" and that the defendants have no right to charge the complainants with the losses they incurred of such a character. The complainants are right in their contention that the defendants cannot charge them with "losses incurred by the defendants through their wrongful

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invasion of the complainants' property (*Duplate Corporation v. Triplex Safety Glass Co.*, 81 F. [2d] 352 at 355 and cases cited). But this is not the case here. I am attempting to determine the General Overhead charges or what is really the general expense of the studio during the year in question and it seems clear to me that these particular items were properly chargeable under such account since they were part of the general expenses of the business during the year in question. I shall accordingly allow these items as part of the General Studio Overhead (*Duplate Corporation v. Triplex Safety Glass Co.*, 298 U. S. 448, at 453). 2935

19. The item "Uncollectible Accounts Receivable" amounting to \$3,970.81 claimed by the defendants as part of the General Studio Overhead should more properly be regarded as an item which should appear in a miscellaneous profit or loss account and accordingly I disallow it. 2936

20. The item Home Office Unclassified \$46,081.93 is objected to by the complainants and it appears from the testimony (C. C. S. M., 232) that it represents the cost of making tests in New York Office of various people being considered as screen possibilities though none of them appeared in "Letty Lynton". This is a part of the general expense of the defendants and it seems to me is a proper charge to be included in General Studio Overhead and I accordingly allow it. 2937

21. The item Experimental Work Trick Cameras amounting to \$24,678.10, explained in C. C. S. M., 232, is clearly a part of the general expense of operation of the studio and as such properly a part of the General Overhead expense of the studio, and accordingly I allow it. The evidence respecting this experimental work is clear and this item is a very different item from that described by the master in *Computing Scale Co. v. Talcott Computing Scale Co.*, 279 Fed. 648 at 658.

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2938 22. I will now consider the items listed on Defendants' Exhibit No. 18-E-2, first taking up the debit items and then the credit items. The item of \$298,025.47 represents salaries of unused or idle artists which have not been assigned to any particular pictures. I hold that this is a proper item to be included in the General Studio Overhead (*Larson v. Wrigley, supra*).

23. The balance of the debit items represent items of overhead of various departments of the company which have not been absorbed specifically into particular pictures and I hold that all of these items are properly part of the General Studio Overhead of the company.

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24. With respect to the credit items: I shall allow all of these credits with the exception of the item "Wardrobe Department \$3,593.52", which I shall disallow as a credit inasmuch as I have disallowed departmental overhead of this department and this item of \$3,593.52 represents an over-absorption of such overhead. I shall also disallow the item under "Laboratory" amounting to \$861,839.24 inasmuch as I have allowed as a charge against this picture the actual cost of the laboratory work done on this picture and have disallowed any excess charges over and above the actual cost of the laboratory work. Accordingly, there is no reason why the complainants should receive any benefit from this credit item and it is therefore eliminated. All of the other items in the credit column I hereby allow as proper credits to the General Studio Overhead account.

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25. As hereinbefore stated, the overhead of the Women's Wardrobe Department in the sum of \$2,500 charged against "Letty Lynton" as a part of the departmental overhead of the Department, I disallowed inasmuch as it was not based on labor and material but was simply an arbitrary figure based on the judgment of the head of the department. The overhead of this department appears in Defendants' Ex-

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hibit C-4 and the total charges amount to \$73,786.32. There should be added to this sum an additional item appearing on this exhibit and listed as "112-5 Miscellaneous" amounting to \$4,675.11, making a total of \$78,461.43. There should be deducted from this total the items listed on this exhibit and numbered "110", "111" and "113" totalling \$2,126.53. Deducting this sum from the total charges as reconstituted above, leaves a sum of \$76,334.90. This sum should be added to the General Studio Overhead as stated above.

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26. On Defendants' Exhibit No. 18-D-5 the second item claimed by defendants as a part of the General Studio Overhead is an item entitled "Addition to Reserve for Continuities \$500,000.00". The testimony respecting this item appears at pages 562-587 N. Y. S. M. Continuities are stories or parts of stories which may be used in connection with the production of a motion picture. The accountants examining the books in 1930 apparently found an accumulation of continuities costing approximately \$881,000 and they decided to recommend to the management that they write off approximately \$505,000 of these continuities. The next year they found that some of the continuities that had been written off in 1930 were reinstated because they were used and during that year they recommended that only a very small amount be written off. In 1932 they concluded that there should be a reserve set up against this continuity account and they recommended that \$500,000 be set up as this reserve. This was not a write off. This was the first year in which a reserve was set up. The defendants argued that this reserve was set up and correctly stated the amount of investment in continuities for 1932 that should be designated as worthless. However, there is no testimony in the record to show that none of this reserve subsequently was reduced by the use of the continuities. In fact, there is testimony in the record to show that a substantial amount of the write off for continuities in 1930 was subsequently shown to be unnece-

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2944 sary as the continuities were used and went into production. In a case of this sort accountants would probably differ as to whether this kind of a reserve should be a charge against earnings or against surplus. It seems to me that the evidence I have referred to indicates that this charge was really a charge made to more conservatively state the capital assets of the company and that it should be regarded as a charge against surplus rather than as a part of the overhead of the business. Accordingly, I find that this item of \$500,000 is improperly included in the General Studio Overhead and should be eliminated.

2945 27. A credit is listed on Defendants' Exhibit No. 18-D-5 of income from royalties from music publishers amounting to \$11,520.35 and this I find should be allowed.

2946 28. The next item I shall consider is the item listed on Defendants' Exhibit 18-D-5 entitled "Compensation paid to Louis B. Mayer Pictures" amounting to \$922,141.09. It is clear from the evidence that the salaries paid to Messrs. Mayer, Thalberg and Rubin during the year in question were at the weekly rate of \$2,500, \$4,000 and \$2,000 respectively. (Mr. Rubin's salary was split into two items, one which was a part of the New York Office expense in connection with the production. These two total approximately \$2,000 a week—Defendants' Exhibit 18-C-1 and Defendants' Exhibit 11.) (As to Mr. Mayer's of \$2,500—see C. C. S. M., 187; and as to Mr. Thalberg's salary, see C. C. S. M., 188 and Defendants' Exhibit 18-D-5 under "Salaries paid by New York".) These salaries are approximately correct, but were in fact slightly less than this on account of a temporary cut which I shall disregard for the purposes of this discussion though the correct amounts appear in the accounting.

The defendants have introduced in evidence (Exhibit 33) in support of their contention that this payment of \$922,141.09 to Messrs. Mayer, Thalberg and Rubin, who com-

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prised the partnership of Louis B. Mayer Pictures, should be allowed as part of the general expenses and included in the General Studio Overhead of the production company. 2947

In support of their argument that Defendants' Exhibit 33, under which these payments were made, was simply a contract for personal services and that the payments made therein are part of the general cost of running the business, the defendants cite two cases—*Stromberg Motor Devices Co. v. Zenith-Detroit Corp.*, 73 F. (2d) 62 at page 65, Cir. Ct. of Appeals, 2nd Cir.; and *Stromberg Motor Devices Co. v. Detroit Trust Co.*, 44 F. (2d) 958 at page 963, Cir. Ct. of Appeals, 7th Cir. The court in the first case, in referring to the agreement under which the payments were made, noted the fact that the agreement was entered into some time before the patent in question was infringed and that there was no reasonable basis for believing that there was any attempt to divide profits as a result of the contract. The court stated: 2948

"While the sharing of profits as such would not be permitted to the detriment of the plaintiff, a *bona fide* royalty agreement, such as this one seems to have been, had no other effect than to add to the expense of the business and reduce the defendant's actual profits."

The court thereupon allowed the credit. 2949

In the *Stromberg* case in the 7th Circuit, the court pointed out (at p. 963) that the payments were made to the manager of the business who received a small fixed salary and a certain percentage of the business done. The court held that there was nothing in the record to question the good faith of the contract as one for remuneration for services. The amount of the payment involved was approximately \$98,000 and the court found that the business was well conducted, was a large business and very profitable, and that the compensation to the manager as a result of

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2950 these payments was not at all out of reason as such matters go.

The complainants objecting to the inclusion of these payments under Defendants' Exhibit 33 in the general expenses of the production of these pictures, cite in particular the case of *Lee v. Malleable Iron Range Co.*, 47 Fed. 795, at page 798. In this case, as it appears at page 798, three of the defendant's managers were paid commissions in an aggregate of something over \$200,000 by way of compensation over and above regular salaries and the defendant claimed that these commissions were items of cost of production to be deducted. In stating the account, the master held that these payments were not salaries, but in reality a division of profits and the court upheld the master's decision in the following language:

2951 "The large amount, the terms of corporate resolutions for their contingent award, their progressive increase with increased profits, and their treatment as such dividends or divisions upon the books, are alone sufficient to support the master's view. The resolutions, if lawful, while authority for their ultimate payment, nevertheless placed no obligation upon the beneficiaries not already comprehended within their contracts for service at stipulated salaries. In my judgment, a good way to test out the status of these payments in respect of cost or profits is to consider whether defendant, as a manufacturer, in endeavoring to make up a yearly budget upon any assumed volume of business, in any aspect of the matter, would have included these payments, or any estimate thereof, as an item of cost of manufacture. Obviously not. The arrangement or plan was but the introduction of the common co-operative idea between employer and employe, in which the former agreed to give and did give to the latter a percentage of profits, if and when earned."

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I shall consider Defendants' Exhibit 33 in the light of these authorities. Defendants' Exhibit 33 is an agreement between Metro Pictures Corporation and Louis B. Mayer, Inc., dated April 7, 1924, and modified from time to time by subsequent agreements all of which are contained in Defendants' Exhibit 33. The effect of the original agreement of April 7, 1924, was to place Messrs. Mayer, Thalberg and Rubin (acting through Louis B. Mayer Pictures, Inc., of which company they constituted the board of directors and officers), as supervisors and managers of the motion pictures to be produced by the Metro Pictures Corporation. On page 8 of the contract, Louis B. Mayer Pictures, Inc., which controlled the individuals mentioned, agrees to make no charge to the Metro Pictures Corporation except a charge of \$1,500 a week for Mr. Mayer's salary, \$650 a week for Mr. Thalberg's services and \$600 a week for Mr. Rubin's services and the actual cost of maintaining an office. 2953 2954

It is interesting to note that the contract provides, at page 9, that in arriving at the cost of production no charge was to be made for interest on monies advanced for production. According to this contract, Louis B. Mayer Pictures, Inc., for its compensation is entitled to receive a sum equal to 20% of the net receipts of the Metro Pictures Corporation or the actual distributors of the pictures from the distribution or other disposition of each of said pictures produced. Various changes were effected, as appears in Defendants' Exhibit 33, and on February 16, 1927, as appears from page 30 of this Exhibit Loew's, Inc., made an agreement with Louis B. Mayer Pictures, a partnership composed of Messrs. Mayer, Thalberg and Rubin, and Metro-Goldwyn Pictures Corporation, which was the successor to Metro Pictures Corporation. This contract modified and changed the agreements theretofore made and included in Exhibit 33. Under this contract, Loew's, Inc., takes over the contract from Metro-Goldwyn Pictures Cor- 2955



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2956 poration and assumes it from September 1, 1926 to April 7, 1932. In lieu of the compensation of 20% of the net profits payable to the partnership composed of Messrs. Mayer, Thalberg and Rubin, it is provided in this agreement (Defendants' Exhibit 33, p. 31) that the partnership should be paid by Loew's, Inc., a certain percentage of the combined net profits of Loew's, Inc., and of its subsidiaries and its companies and ventures. This percentage was determined after deducting from the combined net profits of Loew's, Inc., its subsidiaries and companies and ventures a sum amounting to \$2.00 a share on the present issued and outstanding capital stock of Loew's, Inc. The agreement expressly provided that this did not necessarily mean that a dividend of \$2.00 a share on the Loew's stock would have to be paid or that any dividends would have to be paid to Loew's by its subsidiaries. The percentage of the net profits was simply figured after deducting an amount equal to \$2.00 a share on the Loew's stock from the consolidated net profits of all the Loew enterprises. By paragraph 12 of this agreement (pp. 38-39), it is expressly stated that the salaries of Messrs. Mayer, Thalberg and Rubin and the cost of the New York office are separate and in addition to the percentage compensation provided in this agreement and it is specifically stated that these salaries and expenses shall be a proper cost charge in computing the combined net profits. However, the percentage compensation to the partnership is expressly stated not to be a cost charge in computing profits.

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The agreement of December 15, 1932, which appears on page 52 of Defendants' Exhibit 33 extended the original agreement as modified until December 31, 1938 and gave to Messrs. Mayer, Thalberg and Rubin, in addition to their salaries and the compensation they enjoyed through the partnership Louis B. Mayer Pictures, certain options to purchase an aggregate of 200,000 shares of common stock of Loew's.

The salaries of Messrs. Mayer, Thalberg and Rubin,

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being, respectively, at the weekly rate of approximately \$2,500, \$4,000 and \$2,000 or a yearly rate of approximately \$135,000, \$200,000 and \$100,000, respectively, can only be regarded as very substantial salaries, no matter how large the business. It must be borne in mind that the testimony shows that these salaries were paid these gentlemen for their part in the producing end of the business and that credit for these salaries as a cost of the business is taken by the Metro-Goldwyn Pictures Corporation in its account appearing in Defendants' Exhibit 18 and schedules attached. As stated above, the agreement (Defendants' Exhibit 33) expressly provided that these salaries would be regarded as a proper cost charge in computing the net profits and I have allowed all of these salaries as a part of the general expenses of Metro-Goldwyn Pictures Corporation. I find that there is nothing in the record to question the good faith of this contract. It was entered into long prior to any dispute arising out of the production of the picture "Letty Lynton". I can find, however, no evidence in the record to justify a holding that the sum paid by virtue of Defendants' Exhibit 33 to Louis B. Mayer Pictures during the year of this accounting was a part of the general expenses of the production of pictures by the Metro-Goldwyn Pictures Corporation during the year in question. The contract itself, as pointed out above, specifically says (Defendants' Exhibit 33—p. 39) that this percentage compensation to the partnership shall not be considered a cost in computing the net profits of this enterprise. The percentage as determined on page 31 of Defendants' Exhibit 33 is arrived at after the ascertainment of the consolidated annual net profits of Loew's, Inc., and all its subsidiaries and its companies and ventures. It is perfectly clear from this that the percentage to be paid had no relation whatsoever to the cost of production and in no sense could it be considered as a part of the cost of production. The percentage to be paid is a percentage of profits and there can be no profits until after the deduction

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2962 of all costs and expenses. It must be conceded that there would have been no distribution of a percentage of profits under this contract in the ordinary way until after the deduction of all amounts paid authors for the rights to plays to be produced. Compensation paid the authors of "Letty Lynton", if purchased in the ordinary way, would have been deducted before arriving at any profit distributable under this contract. The recovery which I am called upon to find in this case in effect takes the place of the amount which should have been paid to the authors of "Letty Lynton", as aforesaid, and accordingly must be deducted from gross income before it can be said that there was any profit distributable under the contract (Defendants' Exhibit 33). Therefore, the amount of any payment of profits under the aforesaid contract cannot affect the amount of recovery to be paid these complainants. I find no place for the inclusion of this payment in the general overhead or general expenses of the Metro-Goldwyn Pictures Corporation as set forth in its account (Defendants' Exhibit 18 and subsequent pages). Certainly, if Judge Geiger's test should be applied in this case, as quoted above in *Lee v. Malleable Iron Range Co., supra*, this payment should be disallowed. I shall disallow the item of \$922.141.09 appearing on Defendants' Exhibit 18-D-5 as compensation paid to Louis B. Mayer Pictures.

2964 29. I shall now consider the items listed under salaries paid by New York on Defendants' Exhibit 18-D-3. The first of these is an item paid Thalberg amounting to \$151,650. The testimony respecting this payment is found on pages 181-183 N. Y. S. M. I find that this is a proper charge to the General Studio Overhead and accordingly I allow it.

30. The next item entitled "Other Production Executives" shows payments aggregating \$26,000 as listed on Defendants' Exhibit 13. Though these payments were not

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made until after the fiscal year in question they were charged back into the fiscal year to the general overhead and were paid to men who were part of the general organization (N. Y. S. M., 230-233) though these individuals did not have anything specifically to do with the production of "Letty Lynton". I find that this item of \$26,000 is a proper charge to the General Studio Overhead and accordingly I allow it (*Larson v. Wrigley, supra*). 2965

31. The item of interest amounting to \$1,559,559.79 appearing on Defendants' Exhibit 18-D-5 is described in N. Y. S. M., 191-193 and 239-246 as payment of interest at the rate of 6% per annum made during the year in question on the money loaned by Loew's, Inc., to Metro-Goldwyn Pictures Corporation and then by the Pictures Corporation to the producing company. At the beginning of the year in question the loans stood at approximately \$29,000,000 and at the end of the year the loans were approximately \$22,000,000. That is, during the year in question the loans were reduced by approximately \$7,000,000. According to the testimony, the money was loaned by Loew's, Inc., and invested in pictures, processes, books and rights. The loans date back to the inception of the company or roughly to about 1920 or twelve years before the accounting year in question. The loans were not represented by notes but took the form of an open account. There was no attempt made at the hearings to show in any detail what these monies were used for. It was conceded by the defendants' witness (N. Y. S. M., 242-3) that in less than six months from the beginning of the work on the picture "Letty Lynton" all of the monies expended thereon by the defendants were recovered in cash from the sale of the picture. It is also conceded that the pictures company did not credit the "Letty Lynton" Account with any interest on monies received on account of the sale of the picture "Letty Lynton" (N. Y. S. M., 246). I shall hereafter allow in this accounting as a part of the general 2966

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2968 expenses of the defendants full depreciation on the studio and facilities and also full interest on the investment in the studio plant and equipment as claimed in Defendants' Exhibit 18-D-5 and I believe defendants should be allowed interest on the working capital necessary to produce the picture "Letty Lynton". However, the evidence is not entirely clear as to just how much working capital was necessary to carry out the production of this picture. I find from all the evidence in the record that the amount of working capital necessary to produce this picture could not have been more than \$300,000 and I rather believe that this is a high figure and I also find that this capital could not have been employed for more than six months. (Again I believe that this is an outside period of time and probably it was not employed for as long as that inasmuch as the testimony above referred to shows that the entire cost was recovered within a period of six months.) Figuring interest at 6% on this sum for six months, it amounts to \$9,000 and I shall allow this item as a part of the direct cost of the production of "Letty Lynton".

2969 It is interesting to note in connection with the claim of the defendants that this item of interest of \$1,559,559.79 should be included in the general expenses of the cost of production of pictures that the course of conduct of the defendants does not substantiate its claim. I do not say that this is conclusive but it is clear that under Defendants' Exhibit 33 it is expressly stated that there shall be no charge for interest on monies advanced for production.

2970 32. I shall now consider the items on Defendants' Exhibit 18-D-5 of Depreciation Los Angeles Studio and Interest on Investment in Studio. The depreciation in the Los Angeles Studio appears in Defendants' Exhibit No. 9 and amounts to \$520,631.21. The rate of depreciation on the equipment was 15% and that on the buildings was 5%. The testimony with reference to the calculation of this depreciation appears on pages 357-364, N. Y. S. M. De.

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fendants' Exhibit 18-F shows how the item appearing as Interest on Investment in Studio amounting to \$310,584.16 is computed. The value of the land is the appraised value of the land as of the year in question in this accounting (N. Y. S. M., 364 and references) and the value of the buildings is the actual cost of the buildings as shown by the books less depreciation at the rate of 5%, and the value of the equipment is the cost of the equipment as shown by the books less depreciation at the rate of 15% (N. Y. S. M., 365, 366, *et seq.*). Complainants object to this method of computing values and claim that the value of the property during the year in question when it was used by the production of "Letty Lynton" is the only true test of value and that taking the cost of the buildings and equipment less the depreciation does not necessarily show the actual value of the buildings and equipment at the time of its use by this production. Theoretically, complainants may be right but it is a very common practice for companies in attempting to arrive at a proper statement of their assets represented by buildings and equipment to state the value of such assets at cost less depreciation. I agree with the defendants that to have required a physical appraisal of the value of all of the buildings and equipment at Culver City during the fiscal year 1932 would have been an interminable task and I am not at all sure that the result would have been any more accurate as to the value of these properties than the method employed by the defendants in setting up these values in this account. I shall find that the method employed by the defendants in estimating the values of the land and equipment at Culver City in use during the year in question is a fair and reasonable method and that they should be permitted to include in the General Studio Overhead in this accounting on Defendants' Exhibit 18-D-5 the depreciation shown on Defendants' Exhibit 9 amounting to \$520,631.21. Interest on the average investment in

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2974 studio, plant and equipment shown on Defendant's Exhibit 18-F of \$310,584.16 must also be allowed as a part of the General Expense of conducting the studio. Inasmuch as I eliminated the item of Rental of Studio and Facilities amounting to \$334,464.61 appearing on Defendants' Exhibit 18-E-1, which item was simply a part of depreciation, I also eliminate it as a credit on Defendants' Exhibit 18-D-5 and allow the full amount of depreciation of Los Angeles Studio in the amount of \$520,631.21 as a part of the General Studio Overhead. (*Gordon v. Turco Halvah Co.*, 247 Fed. 487; *The Tremolo Patent*, XXIII, Wall 518; *National Carbon Co. v. Richardson*, 16 Fed. Supp. 239, aff'd 85 F. [2d] 490.)

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33. Pursuant to the aforementioned disposition of the various items appearing under General Studio Overhead on Defendants' Exhibit 18-D-5, I find that the correct amount of General Studio Overhead should be \$3,849,686.58 instead of the item as listed on Defendants' Exhibit 18-D-5 of \$5,891,374.57.

34. I shall now consider the question as to what proportion of the General Studio overhead or expense should be allocated to the production of the picture "Letty Lynton" and as such added to the cost of production of said picture.

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We have seen from the testimony that Departmental Overhead in practically every instance was charged against this picture either on the basis of labor and materials used or of facilities used. It appears from the testimony (C. C. S. M., 489) that it was the practice of the studio to add to the cost of each feature production a charge of overhead at the rate of \$1,559 per camera-day. A "camera-day" is a term used for a shooting day—a day on which a production is actually in process of being photographed (C. C. S. M., 489). This was a method adopted by the studio in an effort to absorb the studio overhead in the separate pictures and it resulted in an aggregate amount charged to

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"Letty Lynton" for the 33 "shooting days" which this picture consumed of \$51,447. This amount does not appear in the amended accounting because this amount, added to such amounts as under this method were allocated to the other pictures produced during the year, was not sufficient to absorb the total overhead of the studio in the fiscal year. Further, this method does not take into account the actual costs of the labor and materials put into any individual picture; for example, on Defendants' Exhibit C-25 the picture #601 "Polly of the Circus" took 33 "shooting days" and cost approximately \$430,000 while "Letty Lynton" #611 required 33 "shooting days" and cost, according to this compilation \$316,000. Accordingly, I shall hold that this method of computing overhead, that is, the so-called "shooting day" method, is not acceptable in ascertaining the proportion of the overhead or general expenses of the business directly chargeable against the picture "Letty Lynton".

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Defendants have suggested another method of computing overhead and this method appears on pages 559-560 (C. C. S. M.). This theory may be briefly explained by reference to this testimony and to Defendants' Exhibit C-25. The defendants, using their Exhibit C-25, take the pictures wholly produced in the year 1932 and add to them the total of the percentages of pictures produced in 1931 and partly in 1932 and the percentages of pictures partly produced in 1932 and 1933 calculated entirely by "shooting" days. The result of this computation is a total of 3,702.1 "shooting days" and in order to get the number of completed pictures represented by that percentage they divide that figure 1,100 and the result is 3.7 completed pictures. Again referring to this exhibit and tabulating the percentages according to cost of pictures, the result is 3,640.7 and dividing this by 100 gives a result of 36.4 pictures completed. According to this theory, the defendants contend that the overhead should be divided numerically among the completed pictures and that "Letty Lynton" should bear 1/36th

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2980 of the General Studio Overhead or general expenses during the year in question. This is the explanation of the item appearing on Defendants' Exhibit 18-D-5 in the amount of \$163,649.29.

I find that this numerical division of the overhead on the basis described and the method of determining the number of pictures produced in the year as described in the above quoted testimony is not a satisfactory method for determining the proportion of the overhead to be charged as a direct cost to the picture "Letty Lynton". This numerical method results in an equal charge of a proportion of overhead to each picture produced in the year irrespective of what the picture costs in direct labor and materials. In other words, if one picture cost \$100,000 to produce and it took 30 days to produce and another picture cost \$500,000 to produce and production took the same number of "shooting days", each of these pictures would be charged with the same amount of the general overhead or general expenses of the business. This does not seem to me to be fair or reasonable.

2981 Complainants' position, of course, is that this picture should not be charged with any part of the overhead but I cannot accept this suggestion as representing the law in a matter of this sort. If any part of the general overhead is to be charged against this picture, complainants claim it should be based on the ratio of the cost of labor and materials put into "Letty Lynton" to the total cost of labor and materials on all pictures produced in the same fiscal year. In their Memorandum (p. 12), complainants take the cost of labor and materials of all the pictures as per Defendants' Exhibit C-25 corrected by the addition of two pictures and find a total cost of pictures produced during the year in question of \$16,251,443.32. Complainants then deduct the studio overhead absorbed in the pictures as per Defendants' Exhibit C-25 amounting to \$2,158,868, from this amount, leaving a balance constituting labor and materials consumed in the pictures produced

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during the year in question of \$14,097,575.32. Complainants then take the labor and materials used in "Letty Lynton" as claimed by the Defendants' Exhibit 18-D-5 of \$262,682.69 and find that the ratio of the labor and materials used in "Letty Lynton" to the total labor and materials used in all pictures produced during the year amounts to .018.

I find that this is the correct method to compute the proportion which should be charged against the picture "Letty Lynton" of the General Studio Overhead during the year in question. Having determined the total of the General Studio Overhead in the production of motion pictures by the defendants, I am now attempting to determine what is a fair and proper method of allocating this general overhead and general expenses to the pictures produced. The complainants' method, which bases overhead on cost of labor and materials, seems to me the sound way to handle this situation.

On the fourth page of Defendants' Exhibit C-30, defendants seek to prove that even though the method advocated by the complainants is used to determine the proportion of the overhead or general expenses which should be borne by "Letty Lynton", still the estimate of the cost of "Letty Lynton" for the purposes of this computation is inaccurate because in the total cost of all pictures the cost of all foreign versions are included but in the cost of "Letty Lynton" the foreign versions of "Letty Lynton" are not included and if these are included the total cost of "Letty Lynton" would be \$300,176.38 and the proper ratio would then be .0213. Complainants meet this claim by pointing out that what is being determined here is the ratio of the total of labor, materials and departmental overhead expended upon the domestic version of "Letty Lynton" to the total labor, materials and departmental overhead costs incurred at Culver City on all productions. It seems to me that the complainants are right and that in the accounting of the Pictures Corp. we are dealing with the production costs of

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2986 the domestic version of "Letty Lynton" and that is all. The cost of the foreign versions of "Letty Lynton" is accounted for in Defendants' Exhibit 20-D, which is part of the accounting of the Culver Export Corporation and Culver Export Corporation is the only one in a position to charge as a part of the cost thereof a fair proportion of overhead.

35. Having found the cost of "Letty Lynton" on Defendants' Exhibit 18-D-5 to be \$262,629.21 the ratio should be .018. Using this ratio to the total overhead of \$3,849,686.58 as stated above, I find that a sum amounting to \$69,294.36 should be added to the cost of "Letty Lynton", making a total negative cost of \$331,923.57 instead of the total negative cost of \$426,331.98 appearing on Defendants' Exhibit 18-D-5. 25% of this amount, according to the account, is charged to Culver Export Corporation and, accordingly, this 25%, amounting to \$82,980.89, should be deducted, leaving what I find to be the negative cost to Pictures Corp. of the production of "Letty Lynton", that is \$248,942.68.

36. There is no dispute about the positive and other direct costs listed on Defendants' Exhibit 18-D-5 with the exception of the dues listed as payable to the Motion Pictures Producers and Distributors Association amounting to \$3,630.12. I have examined Defendants' Exhibit 32 which is a form of application for Class A membership in the Motion Pictures Producers and Distributors of America, Inc., together with copies of resolutions with reference to fees and dues adopted by the incorporators of the Association and it would appear from a reading of these resolutions that while the particular contingency which has arisen in this case has not been provided for in said resolutions, nevertheless, the whole tenor of paragraph 6 of the resolutions is to the effect that the Association will rectify and adjust as may be necessary any payments made for or on

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account of membership fees. It is difficult for me to see how the defendants should receive credit in this accounting for these fees paid which were apparently based on gross receipts to which the defendants were not entitled if the findings which I shall make in this case are upheld. Accordingly, I find here that this credit claimed by the defendants may not be allowed to them as a part of the cost of producing "Letty Lynton". Accordingly, the item on Defendants' Exhibit 18-D-5, the cost of positives and other direct costs, should be \$48,163.13 instead of \$71,793.25.

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37. I hereby find that the total production cost to the Pictures Corp., excluding Canada, of "Letty Lynton" was \$317,105.81.

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38. Pursuant to the above stated findings, I find that the production cost appearing on Defendants' Exhibit 18 of "Letty Lynton" is \$317,105.81 instead of \$391,542.24 and that the net income, excluding Canada is \$256,003.11.

39. There is no dispute about the Canadian film rental income and the amount retained by the Regal Films, Limited, and the net film rental income from Canada appearing on Defendants' Exhibit 18. Accordingly, I find these items to be accurately stated on said exhibit.

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40. There is no dispute about the cost of prints or the ERPI royalty and I disallow the MPPDA dues of \$79.69 which is similar to the other item of MPPDA dues which I disallowed above. This disallowance results in the net income from Canada amounting to \$12,858.03 and I accordingly find that this amount is accurate. The net income from "Letty Lynton" to the Pictures Corp. from all sources is therefore found to be \$268,861.14.

41. The final item on Defendants' Exhibit 18 is a claim for an allowance on the part of the defendants for Federal



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992 income taxes. I disallow this claim for the reasons hereinafter stated in the closing pages of this report.

42. In the interest of simplicity, I shall now restate the first page of Defendants' Exhibit 18 pursuant to the findings heretofore set forth:

*Reference to  
Findings by  
Paragraph No.*

1	Film Rental Income (excluding Canada)	\$727,053.84
1	Less: Retained by MGM Dist. Corp. (20%)	145,410.77
	1 Net Film Rental Income	\$581,643.07
2.8	Distribution Expense	8,534.15
		<hr/>
		\$573,108.92
2-38	Production Cost	317,105.81
		<hr/>
	Net Income (excluding Canada)	\$256,003.11
39	Canadian Film Rental Income	\$27,369.72
39	Less: Retained by Regal Films	11,432.29
		<hr/>
39	Net Film Rental Income	\$15,937.43
	Less:	
40	Cost of Prints	2,479.40
40	ERPI Royalty	600.00
		<hr/>
		3,079.40
		<hr/>
40	Net Income from Canada	12,858.03
		<hr/>
40	Net Income from "Letty Lynton"	\$268,861.14

*Report of Special Master.*ACCOUNTING OF METRO-GOLDWYN-MAYER  
DISTRIBUTING CORPORATION.

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(HEREINAFTER CALLED DISTRIBUTING CORP.)

1. I shall now consider the accounting of Distributing Corp., set forth in Defendants' Exhibit 19. The net film rental income to be accounted for by the Distributing Corp. is simply the total film rental income of "Letty Lynton" less 80% thereof which is reflected in the account of the Pictures Corp. Accordingly, in this accounting the net film rental income to be accounted for I find to be \$145,410.77.

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2. The pictures that were produced by the defendants were turned over to the Distributing Corp. to distribute. The method of distribution is explained in the testimony (N. Y. S. M., 624) and may be summarized by saying that the Distributing Corp. made contracts for a large number of pictures at one time and used contracts patterned on Defendants' Exhibit 16 for this purpose. There was no possible way of segregating the exact costs of distribution to any individual picture. Defendants' Exhibit 16 provided apparently for a license fee or minimum guarantee against percentage of receipts and for a statement of gross receipts in excess of which the distributor would share. The designation of the picture was by production number and by the name of the star. The name of the picture itself was apparently not included in this contract.

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3. The contention of the defendants, as indicated on Defendants' Exhibit 19-A, is that in order to determine the ratio of the distribution expense to film rental income with respect to the picture "Letty Lynton" the total film rental income (excluding Canada) of the entire business should be taken and from this in the Distributing Corp. accounting there should be deducted 80% thereof, which, accord-

*Report of Special Master.*

2998 ing to the practices of the companies, was handed over to the Pictures Corp., leaving a net film rental income to the Distributing Corp. of \$6,004,105.22. The net distributing expense then is calculated in Defendants' Exhibit 19-A to have been \$4,615,558.49 and since this sum amounts to 76.87% of the net film rental income that is the ratio which should be applied in estimating the distributing expense applicable to the picture "Letty Lynton". This amount is shown on Defendants' Exhibit 19 to be \$111,777.26 and defendants claim that this represents the distributing expense of "Letty Lynton" and should be deducted from the net film rental income, leaving a balance of \$33,633.51 to be accounted for before any allowance for Federal income taxes. It must be remembered, as pointed out in paragraph numbered 8, supra, the Pictures Corp. claim an item of \$12,505.33 as its share of the cost of distribution of this picture, and it lists items showing that its total distributing expense amounted to \$516,031.63. What the defendants are claiming is that the Distributing Corporation expense in connection with "Letty Lynton" amounts to \$111,777.26 and the Pictures Corp. expense in connection with distribution of "Letty Lynton" amounts to \$12,505.33 or a total of \$124,282.59 as representing the cost of distribution of the Distributing Corp. and of the Pictures Corp. with respect to the picture "Letty Lynton".

3000 4. Sales of all pictures during the year 1932, as stated in Defendants' Exhibit 19-A was \$30,020,526.08 and the total distribution cost of all pictures during the year 1932 as claimed in Defendants' Exhibits 18 and 19 were the following:

Metro-Goldwyn-Mayer Distributing Corp.	\$4,615,558.49
Metro-Goldwyn Pictures Corp.	516,031.63

or a total distribution cost of all pictures during 1932 of \$5,131,590.12

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And this sum amounts to 17.094% of the gross sales of all pictures. If you take the gross sales of "Letty Lynton", \$727,053.84 and multiply it by 17.094%, you will arrive at the figure \$124,282.58, which is the total figure which is claimed as distributing expense by both the Distributing Corp. and the Pictures Corp. 3001

5. The contention of the defendants is based on the theory that distribution expense must be determined in relation to gross sales.

6. The complainants, on the other hand, strenuously object to this method of computation and claim that any division which would divide the expense of distribution in proportion to the gross receipts deliberately penalizes a good picture to the benefit of a poor picture. Complainants point out the practice of the defendants as hereinabove detailed in the making of contracts for the exhibition of these pictures and claim that the only fair method of dividing the distribution expense is the numerical method or in other words to divide the expense equally among the number of pictures distributed. 3002

7. In order to test the fairness of the defendants' contention, let us suppose the production and distribution of two feature pictures, A and B, which were distributed as was the usual practice by the defendants with other feature pictures under a form of contract similar to that in evidence in this case (Defendants' Exhibit 16). Let us assume that the net film rental income of picture A was set forth in an exhibit similar to Defendants' Exhibit 19 and that this net film rental income amounted to \$1,000. Now let us assume the net film rental income, similarly set forth, of picture B amounted to \$200,000. Under defendants' theory the distribution expense of picture A would be listed on Defendants' Exhibit 19 as \$760 and the distribution expense of picture B would be listed as 3003



*Report of Special Master.*

3004 \$152,000. This result seems to me obviously unfair. A complainant similarly situated to the complainant in this case apparently would be able to hold a defendant in a case in which the A picture was involved for \$240 profit when obviously the picture would have shown a substantial loss to the defendants and the burden of carrying the distribution expense of the unsuccessful picture would have been borne by picture B.

7 3005 8. It seems to me that on the testimony produced at this accounting respecting the method employed by the defendants in distributing the pictures produced, the fairest and most comprehensive principle to adopt in spreading the distribution expense among these pictures is to determine the number of pictures distributed during the year in question and to divide the expense of distribution equally among such pictures.

3006 9. The question then is: How many pictures were produced and distributed by the defendants during the year in question? Complainants claim that a total of at least 60 pictures were distributed by the defendants during the year in question and by this they mean the equivalent of 60 feature pictures and in support thereof they claim that the testimony shows (N. Y. S. M., 963-4), that 43 feature pictures were distributed, among these being the feature picture LETTY LYNTON, which apparently, according to the Defendants' Exhibit R-4, was a nine-reel feature picture; that 43 two-reel shorts and 41 one-reel shorts and 104 news reels were distributed; that in these shorts and news reels there were a total of 231 reels distributed and that dividing this by 9, the number of reels in LETTY LYNTON, we have approximately 25 nine-reel pictures, adding this to the 43 feature pictures brings a total of what is equivalent to 68 feature pictures. In this way, complainants support their contention that 60 feature pictures were distributed during the year, and accordingly.

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complainants claim that the distribution expense should be divided into 60 parts, one part thereof being chargeable to LETTY LYNTON.

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10. I am in the position, therefore, of choosing between these two methods of computing the proper distribution charge to make against LETTY LYNTON. As between the two methods, I find that the complainants' method is to be preferred. However, if I carried it to its logical conclusion I should find that there were at least 68 pictures equivalent to a feature picture distributed during the year but the complainants ask me to find that there were only 60 such pictures distributed during the year. In the absence of any proof other than the claim of the defendants that their method of allocation of distribution expense is a more equitable one and that the complainants' claim is unreasonable assuming that complainants' method is adopted, I shall find that the distribution expense should be divided into 60ths and one-sixtieth thereof be allotted against the picture LETTY LYNTON.

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11. I have already allowed under paragraph 2, of this report dealing with the accounting of Pictures Corp., a credit in the Pictures Corp. of a sum amounting to \$8,517.48, representing the Pictures Corp.'s share of the distributing expense of the picture LETTY LYNTON. This distributing expense of the Pictures Corp., it will be remembered, appears on Defendants' Exhibits 18-A and 18-B and includes a share of the home office expense and depreciation of equipment in the home office.

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The items of distributing expense claimed by the Distributing Corp., as appears on Defendants' Exhibit 19-A, which are contested by the complainants, include the following:

Home office expense	\$1,304,984.38
Depreciation, plants equipment	48,151.63

*Report of Special Master.*

3010	Accounts receivable (written off)	11,100.00
	Interest on investment in branch office equipment	20,375.62

12. I shall allow as a part of the distributing expense the home office expense as listed on Defendants' Exhibit 19-B. It seems clear to me that these items were a part of the expenses of distribution of defendant. With reference to the item of depreciation of branch office equipment, I shall allow this item as a part of distribution expense and overrule complainants' contention that the defendants having failed to show the actual value of this equipment at the beginning of the year in question cannot claim depreciation on its cost value less depreciation. If defendants had been put to that proof it would have greatly lengthened these hearings and, besides I find the method adopted by the defendants to be an accounting method in very general use.

13. With reference to the item "Accounts Receivable Written Off", \$11,100, I shall sustain complainants' objection to the inclusion of this item under distributing expense for the year in question. Such an item is more properly chargeable to some other account, such as "Reserve for Bad Debts" or "Surplus".

14. I shall allow the item "Interest on Investment in Branch Office Equipment" amounting to \$20,375.62 for the same reason as I have allowed similar items in the Pictures Corp. account.

15. The total distribution cost of both the Distributing Corp. and the Pictures Corp. is, therefore, stated to be \$5,120,490.12. 1/60th of this is \$85,341.50. Inasmuch as the Pictures Corp. in its accounting on Defendants' Exhibit 18 claims \$12,505.33 or approximately one-tenth of the total charge claimed by both the Distributing Corp.

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and the Pictures Corp. for costs of distribution (See paragraph numbered 4, supra). - I allow one-tenth of the \$85,341.50 or \$8,534.15, as a proper deduction in the Pictures Corp. accounting, Defendants' Exhibit 18 (See paragraph numbered 8) and nine-tenths of said \$85,341.50 or \$76,807.35 to the Distributing Corp. in its accounting, Defendants' Exhibit 19. Deducting this amount from the net film rental income paid of \$145,410.77 listed on Defendants' Exhibit 19 leaves as the net income from LETTY LYNTON before taxes the sum of \$68,603.42. 3013

16. The final item on Defendants' Exhibit 19 is a claim for an allowance on the part of the defendants for Federal income taxes. I disallow this claim for the reasons hereinafter stated in the closing pages of this report. 3014

17. I shall now restate the first page of Defendants' Exhibit 19, pursuant to the findings heretofore set forth:

Film Rental Income	\$727,053.84
Less: Metro Goldwyn Pictures Corp. share (80%)	581,643.07
Net Film Rental Income	\$145,410.77
Distributing Expense	76,807.35

Net Income from LETTY LYNTON	\$68,603.42	3015
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#### ACCOUNTING OF LOEW'S, INC.

1. Loew's, Inc., is one of the defendants named herein and by the order of reference, I am directed to ascertain and report the amount of the gains and profits of Loew's Inc., by its use of the picture LETTY LYNTON. It appears



*Report of Special Master.*

3016 from Defendants' Exhibit 17 that Loew's, Inc., is the "top holding company" of the group of corporations through which the picture LETTY LYNTON was produced and distributed both here and abroad. The gain and profits of the producing and distributing companies have been discussed above in this report.

2. In addition to this, the evidence shows (Defendants' Exhibits L-1 and L-6-L-13, both inclusive, that Loew's Inc., itself or through its wholly owned subsidiary, Marcus Loew Booking Agency (N. Y. S. M., 193) had an interest in a large number of theatres in which the picture LETTY LYNTON was exhibited.

3017 3. The accounting filed herein by Loew's, Inc. (Defendants' Exhibits L-6-L-13, inclusive) it is claimed, shows the sums of money for which Loew's, Inc., is accountable to these complainants as a result of the exhibition of LETTY LYNTON in the theatres listed in Defendants' Exhibit L-1 (Loew's, Inc., has contended that it is not accountable at all to these complainants).

4. The Defendants' Exhibit L-1, which comprises four separate pages, lists the theatres in question.

3018 The first sheet is a statement of corporations operating theatres which played LETTY LYNTON, the entire common stock interest of which theatres was wholly owned by Loew's, Inc., during the year in question.

The second sheet contains a list of corporations operating theatres which played LETTY LYNTON, the common stock of which corporations was partly owned by Loew's, Inc., during the year in question.

The third sheet lists corporations operating theatres which played LETTY LYNTON, in which corporations Loew's Inc., had an indirect stock interest in whole or in part through one or more intermediary corporations.

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The fourth sheet is a list of theatres which played LETTY LYNTON which were not owned or leased by Loew's, Inc., or any other defendant in this action but were theatres which were managed by Marcus Loew Booking Agency (a wholly owned subsidiary of Loew's, Inc.) under written management agreements with the owners of said theatres.

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As there is no dispute about the accuracy of these lists, I find that the lists comprised under Defendants' Exhibit L-1 contain an accurate statement of Loew's, Inc., interest in the theatres stated therein.

5. The theatres listed on Defendants' Exhibit L-1 and described above in paragraph 4 were the theatres of the Loew's circuit of theatres in which LETTY LYNTON was exhibited (see paragraphs 3 and 6). These theatres were operated as a circuit by Loew's through the instrumentality of its wholly owned subsidiary, Marcus Loew Booking Agency (see paragraph 8 and citations including N. Y. S. M., 1066). The corporations which owned these theatres were primarily in the theatrical business and only incidentally engaged in real estate activities which arose out of the renting of the excess space in the buildings of which the theatres were a part (N. Y. S. M., 1176). It seems clear from the evidence that Loew's, Inc., acting through its managing agency, the Marcus Loew Booking Agency, used these corporations as agents for the exhibition of the pictures produced by the production agency of the Loew organization. Accordingly, I find that Loew's, Inc., is accountable to these complainants for the gains or profits accruing to it through the exhibition of LETTY LYNTON by the theatres owned by these corporations.

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6. The Complainants' Exhibits B, B-1-B-45, all inclusive, and C, C-1-C-23, all inclusive, and D, D-1-D-20, all inclusive, and E, E-1-E-7, all inclusive, and Defendants' Exhibits L-2 and L-4 are photostatic copies of weekly re-

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3022 ports of all of the theatres referred to in Defendants' Exhibit L-1 for the period of time during which the picture LETTY LYNTON was exhibited at these theatres.

7. On Defendants' Exhibits L-6, L-8, L-8+L-10 and L-12 under the headings "Box office receipts of period in which LETTY LYNTON together with other attractions was exhibited", "Cost of feature LETTY LYNTON" and "Cost of other attractions during period in which LETTY LYNTON was exhibited" appear amounts of money set opposite each theatre, which amounts are taken from the weekly reports of the theatres above referred to. There is no dispute regarding the accuracy of these figures and accordingly I find that these three columns of figures, which appear on Defendants' Exhibits L-6, L-8, L-8+L-10 and L-12, as afore-said, accurately represent what they purport to represent.

3023 8. I find that the amounts set opposite each theatre under the heading "Payroll and trade bills for entire week" appearing on Defendants' Exhibits L-6, L-8, L-10 and L-12, which amounts have been taken from the photostatic exhibits above referred to, are accurate and, include a "booking fee" paid to the Marcus Loew Booking Agency. There is no dispute regarding any of these items except the "booking fee". The booking fee was paid by each of the theatres to the Marcus Loew Booking Agency for its services (N. Y. S. M., 1068). The services of the Marcus Loew Booking Agency was to supervise the operation of all the so-called Loew theatres. It had an accounting department, a film booking department, a film buying department, theatre operating department, construction and purchasing departments, etc., etc. (N. Y. S. M., 1066-1067). It had "the say-so in the making up of the show, operating the entertainment and booking the show" (N. Y. S. M., 790). It hired the more important help. It made up the program. It booked the vaudeville acts. It booked the orchestras. It always acted as the agent for the landlord (N. Y.

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S. M., 792). The amount of the booking fee with respect to each theatre was determined in September previous to the beginning of the so-called picture year and was a uniform charge throughout the year and was based on the judgment of the various operating heads and officials of the company as to what was a fair charge for that particular theatre considering the various conditions and the work involved in connection with the theatre (N. Y. S. M., 767). The amount of the fee fixed was approximately 3% of the gross business of the theatre spread over a period (N. Y. S. M., 1074). The booking office loses money according to the witness Mills (N. Y. S. M., 767). Apparently, from the evidence the booking agency operations with respect to these theatres was a valuable service to the theatres and a part of the cost of their operations and accordingly I shall allow this fee to stand as an expense included under the heading "Payroll and Trade Bills".

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9. There appears on Defendants' Exhibit L-6 a column headed "Overhead for Entire Week" and in this column opposite each theatre is listed a sum of money. This sum has been taken from the last column of Defendants' Exhibit L-7. Defendants' Exhibit L-7 shows how the weekly overhead of each of the theatres listed was calculated.

There is a similar column headed "Overhead for Entire Week" on Defendants' Exhibits L-8, L-10 and L-12 and the figures listed in this column are taken from the last column on Defendants' Exhibits L-9, L-11 and L-13, respectively, which latter exhibits show how the weekly overhead of the theatres listed thereon was arrived at.

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Defendants' Exhibits L-8, L-8+L-9, L-10, L-11, L-12, L-13 were all prepared on the same principle as Defendants' Exhibits L-6 and L-7, proper allowance being made for the interest of Loew's, Inc., in the theatres listed in these various exhibits (N. Y. S. M., 722, 777, 779).

Assuming for the moment that defendants are entitled



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3028 to have a credit allowed them for some overhead in the computation of their gains or profits from the exhibition of LETTY LYNTON in these theatres, I find that there is no substantial question raised by the complainants (N. Y. S. M., 1084) as to the accuracy of the amounts which are set forth in Defendants' Exhibits L-7, L-9, L-11 and L-13 and included in the compilation of the general overhead of these theatres, which overhead has been first compiled on a yearly basis and then reduced to a weekly basis by dividing in each instance the total by fifty-two. Accordingly, I find the items listed as aforesaid in the column headed "Overhead for the Entire Week" to be accurate.

3029 10. Complainants contend, first, that LETTY LYNTON should not be charged with any of the overhead of these theatres, and second, that even assuming LETTY LYNTON should bear some proportion of the overhead of the theatres in which it was exhibited, nevertheless, the method employed by the defendants in calculating this overhead is unjust in that it requires the complainants to share in the expenses of real estate operations of the defendant in the profits of which the complainants can never have any interest.

3030 11. Defendants' witness Moscowitz (N. Y. S. M., 1066) testified that he was "In charge of the operation of a circuit of theatres for Loew's, Inc." The theatres in this circuit in which LETTY LYNTON was exhibited are listed in Defendants' Exhibit L-1. As pointed out above, the evidence is clear and undisputed as to the receipts of these theatres when LETTY LYNTON was being exhibited, as to the cost to the theatres of the picture, as to the cost of other attractions during period in which LETTY LYNTON was exhibited, as to the number of days LETTY LYNTON was exhibited, as to the weekly payroll and trade bills of each theatre and as to the weekly overhead of each

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theatre. These facts provide a sufficient basis for the determination of the gains and profits of each theatre arising from the exhibition of the picture in question.

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12. I reject the contention of the complainants that defendants should be denied any credit for the overhead of these theatres during the time LETTY LYNTON was exhibited.

13. The contention of the complainants that even though LETTY LYNTON should bear its share of the theatre overhead, nevertheless it must not be subjected to the burden of any overhead arising from the so-called real estate operations of the defendants, must be considered in the light of the evidence in the record pertaining to this "circuit of theatres". The testimony of the defendants' witness Vogel to the effect that Loew's theatres are not in the real estate business as such and that its real estate activities are only incidental to the use of the excess space of the buildings in which the theatres are located is uncontradicted (N. Y. S. M., 993). It is true that in many instances theatres in this circuit are owned by corporations which derive substantial rent and other income from offices and stores which are a part of the building of which the theatre is also a part (Defendants' Exhibits L-7, L-9, L-11, L-13). In the compilations appearing on these exhibits it will be seen that this so-called "other income" is always deducted from the gross overhead and the net weekly overhead arrived at after this deduction has been made. Defendants have put in evidence a compilation (Defendants' Exhibit L-14) which relates to the theatres whether owned or leased which the Loew's circuit built (N. Y. S. M., 1177). This exhibit lists the "Income from Commercial Space", "Expense of Commercial Space", "Profit or Loss" and "Cost of Commercial Space". Obviously, such a compilation could not have been made by defendants with respect to theatres which

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3034 defendants had not itself *built* for the data described by the witness on page 1179 of N. Y. S. M. would not have been available. This Exhibit L-14 shows that in the aggregate these theatres turned in a profit from the use of commercial space which went to reduce the aggregate overhead of these theatres (N. Y. S. M., 1187). The Candy Income or income from candy concessions in certain of the theatres appearing on Defendants' Exhibit L-15 also was added to the so-called other income of these theatres and thereby reduced the overhead of these theatres as figured above.

3035 It may be that in the case of each theatre a more accurate method of computing the weekly overhead could have been devised. However, the testimony in this case presents this method and no other. I am not prepared to reject it. In fact, it seems to me the most practicable one that could have been devised in the light of the evidence. I, accordingly, find that the weekly overhead of these theatres to be the amounts set opposite each theatre under the heading "Overhead for Entire Week" appearing on Defendants' Exhibits L-6, L-8, L-10 and L-12.

3036 14. Having determined the "Payroll and Trade Bills for the Entire Week" and the "Overhead for Entire Week", complainants and defendants differ as to the allocation of parts of these items as charges against the picture LETTY LYNTON in those instances when the picture was exhibited for a period of less than a week. Complainants contend that these charges should be figured on a *per diem* basis; that is the weekly charge should be divided by seven and the result multiplied by the number of days LETTY LYNTON played. Defendants contend that the box office receipts for the entire week during which LETTY LYNTON was exhibited should be determined and that then the receipts for the days on which LETTY LYNTON was exhibited should be fixed and that the percentage which

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the second amount bore to the first amount should be used 3037  
in determining what percentage of the payroll and overhead expenses for the entire week should be borne by the picture LETTY LYNTON (N. Y. S. M., 679-680).

The expenses of these theatres were on a seven day weekly basis (N. Y. S. M., 682, 729).

From the testimony (N. Y. S. M., 679-698) it appears that most of these theatres were on a flat rental basis as regards the cost of any particular picture and there was no necessity for applying any of the principles used in the contracts written on a profit sharing basis between distributors and exhibitors in which contracts in some instances the weekly playing time was divided into tenths and a greater part of the expenses was allocated to the days at the end of the week at which time the gross receipts were expected to be larger than at any other time during the week. It seems clear to me from this testimony that inasmuch as this picture was rented on a flat rental basis it is only proper to charge it with the expenses of the theatre during the days it was exhibited in said theatre, estimating these expenses on a *per diem* basis and I so hold. 3038

15. Based on the above findings, it is now possible to determine the gains or profits, or loss applicable to the period in which "Letty Lynton" (together with other attractions) was exhibited in each of the theatres listed on Defendants' Exhibit L-1. By then taking "Loew's, Inc., Percentage of Interest" in each theatre as listed on Defendants' Exhibits L-6, L-8, L-10 and L-12 it is a simple calculation to determine the "Amount of Loew's, Inc., profit or loss during period in which "Letty Lynton" (together with other attractions) was exhibited. Using their own figures, defendants have done this in the next to the last column on its exhibits L-6, L-8, L-10 and L-12. 3039

The complainants and the defendants differ as to how this profit or loss should be treated.



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3040 Complainants claim all the profits and reject all the losses.

Defendants contend that complainants are entitled to only two-thirds of the profits and must bear two-thirds of the losses.

041 First I shall examine the defendants' contention. The division of the profits two-thirds to "Letty Lynton" and one-third to the other attractions which were exhibited along with "Letty Lynton" is admittedly arbitrary (N. Y. S. M., 669). Defendants point out that assuming the playing time of "Letty Lynton" and assuming the average length of a moving picture entertainment "Letty Lynton" occupied about two-thirds of the total time (N. Y. S. M., 672). Further, defendants state that the total cost of "Letty Lynton" to all the theatres is approximately 64% of the sum total of the cost of "Letty Lynton" and the cost of the other attractions which were exhibited along with "Letty Lynton" (N. Y. S. M., 724). Based on these considerations, defendants say it is fair to assume that "Letty Lynton" was responsible for only two-thirds of the profits.

012 A careful analysis of the facts presented in the exhibits referred to in paragraph 6, *supra*, leads me to reject the defendants' contention. It appears from these exhibits that the so-called "other attractions" may properly be divided into two classes. The first class (and in this class should be placed a great majority of the theatres) is composed of theatres which exhibited along with "Letty Lynton" one or two "shorts" such as news reels or comics the cost of which was very small compared to the cost of the feature picture "Letty Lynton". The second class (and this class numbered 18 out of a total of approximately one hundred theatres) is composed of theatres in which vaudeville was exhibited along with "Letty Lynton".

With reference to the playing of vaudeville in the Loew chain of theatres, the witness Vogel (N. Y. S. M., 1197) testified that in his opinion the chain receipts were increased

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by the fact that vaudeville was shown with the film. On cross-examination, the same witness testified (N. Y. S. M., 1216-1219, incl.) that in 1932, the year when "Letty Lynton" was exhibited, eighteen of the theatres in the Loew chain showed vaudeville while five years prior to that time there were perhaps one hundred theatres in the chain which ran vaudeville and that today there were only three of the theatres in the chain which ran vaudeville and that in 1932 vaudeville was on its way out as an attraction in the Loew chain of theatres, and asked particularly about the Penn Theatre of Pittsburgh (Complainants' Exhibit D-20), the witness identified certain of the weekly expenses of the theatre as applicable to vaudeville and admitted that even on his assumption that the theatre would not have grossed more than about \$10,000 during the week instead of the actual \$16,000 it did gross if vaudeville had not been played, nevertheless the expenses of vaudeville ate up practically the entire difference between \$10,000 and \$16,000 so that there was practically no profit whatever in vaudeville in that the vaudeville expenses ate up one-third of the box office gross receipts. An examination of the weekly box office statements of the theatres which played vaudeville (Complainants' Exhibits B-4, B-11, B-13, Defendants' Exhibit L-2, Complainants' Exhibits B-27, B-29, B-37, B-39, B-44, C-3, C-12, C-13, D, D-4, D-10, D-8, D-20 and E-7) shows that in many instances the direct expenses of vaudeville amounts to or is in excess of one-third of the receipts of the box office and that there could be practically no contribution to overhead as a result of the vaudeville performances.

An examination of the weekly box office statements of the theatres in the first class mentioned above shows that the other attractions exhibited at the same time that "Letty Lynton" was playing were of minor importance and there is no practical way that any relation that they could have to the gross receipts during the period "Letty Lynton" was exhibited can be determined.

From the above it is clear to me that the cost of the

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*Report of Special Master.*

3046 other attractions including vaudeville are properly deducted from the gross receipts and in that way credited to the defendants in this account and that the complainants are entitled to recover the net profits represented by Loew's, Inc., Percentage of Interest and I so find.

16. There remains the question of the losses. I have heretofore held that these theatres represented a chain through the agency of which Loew's, Inc., exhibited this picture. It seems to me that complainants cannot apply in this case the strict rule applicable to an accounting by a trustee and accept the profits and reject the losses and accordingly I hold that defendants are entitled to deduct from the profits which they are accountable for the losses as calculated pursuant to the above findings.

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16-a: A claim has been made by the defendants for taxes and I hold that this claim must be denied and the Federal Income Taxes treated in the same manner as the other claims for taxes which are dealt with in the last pages of this report under the heading "Income Taxes".

17. In order that the findings which I have made above may be translated into a schedule of account, I have set up, based on these findings, the following papers:

- 3048 1. A compilation to take the place of Defendants' Exhibit L-6.
2. A compilation to take the place of Defendants' Exhibit L-8.
3. A compilation to take the place of Defendants' Exhibit L-8+.
4. A compilation to take the place of Defendants' Exhibit L-10.
5. A compilation to take the place of Defendants' Exhibit L-12.

They are as follows:





## Report of Special Master.

## COMPILATION TO TAKE THE PLACE OF DEFENDANTS' EXHIBIT L-6.

Theatre	1 Payroll and Trade Bills for Entire Week	2 Overhead for Entire Week	3 1 & 2 Reduced to Per Diem Basis	4 No. of Days Letty Lynton Played	5 Amt. of 1 & 2 Applicable to Letty Lynton	6 Cost of Letty Lynton	7 Cost of Other Attractions	8 Total Chargeable to Letty Lynton 5 Plus 6 and 7	9 Box Office Receipts	10 9 less 8	11 Loew's % of Interest	12 Profit or Loss
Astoria	\$2,010.15	\$1,781.71	\$541.69	2	\$1,083.38	\$250.00	\$58.00	\$1,391.38	\$1,998.80	\$607.42	100	\$607.42
Century	1,240.16	499.56	248.53	2	497.06	150.00	25.50	672.56	834.55	161.99	100	161.99
Avenue B	1,563.58	663.79	318.19	3	954.57	325.00	115.25	1,394.82	1,539.60	144.78	100	144.78
Bedford	1,654.15	1,558.66	458.97	3	1,376.91	450.00	123.00	1,949.91	2,906.25	956.34	100	956.34
Boulevard	2,286.32	673.59	422.84	4	1,691.36	800.00	902.28	3,393.64	4,716.10	1,322.46	100	1,322.46
Breevort	1,403.76	642.04	292.25	3	876.75	300.00	100.50	1,277.25	1,152.25	125.00	100	125.00
Circle	1,500.63	622.87	303.32	2	606.64	200.00	67.00	873.64	1,018.60	144.96	100	144.96
Commodore	1,686.55	2,511.71	599.79	3	1,799.25	525.00	113.00	2,437.25	3,246.05	808.80	100	808.80
Coney Island	2,071.74	2,756.37	689.73	3	2,069.19	750.00	125.75	2,944.94	5,424.80	2,479.86	100	2,479.86
Delancey	1,767.00	818.99	369.33	3	1,107.99	525.00	105.00	1,737.99	2,970.59	1,232.51	100	1,232.51
86th St.	1,543.46	531.53	296.43	2	592.86	350.00	50.00	992.86	1,202.45	209.59	100	209.59
Orpheum	3,792.61	1,550.94	763.36	4	3,053.44	700.00	1,368.57	5,122.01	6,188.80	1,066.79	100	1,066.79
83rd St.	2,878.56	2,732.53	801.58	4	3,206.32	1,200.00	126.75	4,533.07	9,913.35	5,380.28	100	5,380.28
Newark	4,557.81	3,457.23		7	8,015.04	3,000.00	2,617.00	13,632.04	17,423.95	3,791.91	100	3,791.91
Elsmere	1,428.35	971.03	342.76	3	1,028.28	225.00	78.25	1,331.53	897.85	433.68	100	433.68
Fairmont	1,950.89	1,641.98	513.26	4	2,053.04	900.00	161.75	3,114.79	5,510.75	2,395.96	100	2,395.96
42nd Street	1,446.54	788.48	319.28	2	638.56	350.00	72.00	1,060.56	1,579.55	518.99	50	259.49
46th Street	1,811.91	2,155.44	566.76	4	2,267.04	800.00	159.00	3,226.04	4,627.90	1,401.86	83 1/3	1,168.21
Hillside	1,473.74	1,823.13	470.98	3	1,412.94	450.00	95.75	1,958.69	2,779.35	820.66	66 2/3	547.10
Kameo	2,083.45	1,264.81	478.32	3	1,434.96	675.00	84.75	2,194.71	4,247.15	2,052.44	100	2,052.44
Lexington	2,450.89	2,629.39	727.75	3	2,177.25	900.00	100.50	3,177.75	6,593.75	3,416.00	100	3,416.00
Lincoln Sq.	1,560.12	731.03	327.30	3	981.90	450.00	92.75	1,524.65	2,182.60	657.95	100	657.95
Melba	1,614.75	2,418.60	576.19	2	1,152.38	400.00	48.00	1,600.38	2,678.25	1,077.87	100	1,077.87
Metropolitan	6,363.58	2,829.32	1,313.27	7	9,192.90	2,000.00	3,563.46	14,756.36	16,856.50	2,100.14	100	2,100.14
National	4,831.04	780.99	373.14	4	1,492.56	700.00	146.75	2,339.31	3,431.70	1,092.39	75	819.29
116th St.	1,570.73	836.41	343.87	4	1,375.48	400.00	135.00	1,910.48	2,237.80	327.32	100	327.32
167th St.	1,894.44	1,632.11	503.79	3	1,511.37	750.00	125.75	2,387.12	5,226.70	2,839.58	100	2,839.58
Palace	1,408.64	992.72	343.05	3	1,029.15	225.00	80.75	1,334.90	1,686.25	351.35	100	351.35
Seventh Ave.	1,472.85	905.31	339.73	3	1,019.19	375.00	123.00	1,517.19	2,049.20	532.01	100	532.01
State, N. Y.	7,946.27	4,000.66	1,706.70	7	11,946.93	3,000.00	5,120.00	20,066.93	23,169.00	3,102.07	83 1/3	2,585.05
New York	2,488.96	2,203.02	670.28	1	670.28	150.00	32.50	852.78	755.30	97.48	33 1/3	32.49
Triboro	3,754.48	2,841.21	942.24	4	3,768.96	700.00	1,075.03	5,543.99	6,315.60	771.61	100	771.61
Woodside	1,600.50	1,188.73	398.46	3	1,195.38	500.00	84.75	1,780.13	2,495.35	715.22	100	715.22
Akron	1,914.47	2,400.82	616.47	4	2,465.88	754.03	105.12	3,325.03	3,770.15	445.12	100	445.12
Atlanta, Grand	1,252.92	1,966.50		6 wkt	2,910.42				2,0			

					1,091.30	800.00	902.28	3,393.64	4,716.10	1,322.46	100	1,322.46
Breezyort	1,403.76	642.04	292.25	3	876.75	300.00	100.50	1,277.25	1,152.25	125.00	100	125.00
Circle	1,500.63	622.87	303.32	2	606.64	200.00	67.00	873.64	1,018.60	144.96	100	144.96
Commodore	1,686.55	2,511.71	599.79	3	1,799.25	525.00	113.00	2,437.25	3,246.05	808.80	100	808.80
Coney Island	2,071.74	2,756.37	689.73	3	2,069.19	750.00	125.75	2,944.94	5,424.80	2,479.86	100	2,479.86
Delancey	1,767.00	818.99	369.33	3	1,107.99	525.00	105.00	1,737.99	2,970.50	1,232.51	100	1,232.51
86th St.	1,543.46	531.53	296.43	2	592.86	350.00	50.00	992.86	1,202.45	209.59	100	209.59
Orpheum	3,792.61	1,550.94	763.36	4	3,053.44	700.00	1,368.57	5,122.01	6,188.80	1,066.79	100	1,066.79
83rd St.	2,878.56	2,732.53	801.58	4	3,206.32	1,200.00	126.75	4,533.07	9,913.35	5,380.28	100	5,380.28
Newark	4,557.81	3,457.23		7	8,015.04	3,000.00	2,617.00	13,632.04	17,423.95	3,791.91	100	3,791.91
Elsmere	1,428.35	971.03	342.76	3	1,028.28	225.00	78.25	1,331.53	897.85	433.68	100	433.68
Fairmont	1,950.89	1,641.98	513.26	4	2,053.04	900.00	161.75	3,114.79	5,510.75	2,395.96	100	2,395.96
42nd Street	1,446.54	788.48	319.28	2	638.56	350.00	72.00	1,060.56	1,579.55	518.99	50	259.49
46th Street	1,811.91	2,155.44	566.76	4	2,267.04	800.00	159.00	3,226.04	4,627.90	1,401.86	83 1/3	1,168.21
Hillside	1,473.74	1,823.13	470.98	3	1,412.94	450.00	95.75	1,958.69	2,779.35	820.66	66 2/3	547.10
Kameo	2,083.45	1,264.81	478.32	3	1,434.96	675.00	84.75	2,194.71	4,247.15	2,052.44	100	2,052.44
Lexington	2,450.89	2,629.39	727.75	3	2,177.25	900.00	100.50	3,177.75	6,593.75	3,416.00	100	3,416.00
Lincoln Sq.	1,560.12	731.03	327.30	3	981.90	450.00	92.75	1,524.65	2,182.60	657.95	100	657.95
Melba	1,614.75	2,418.60	576.19	2	1,152.38	400.00	48.00	1,600.38	2,678.25	1,077.87	100	1,077.87
Metropolitan	6,363.58	2,829.32	1,313.27	7	9,192.90	2,000.00	3,563.46	14,756.36	16,856.50	2,100.14	100	2,100.14
National	1,831.04	780.99	373.14	4	1,492.56	700.00	146.75	2,339.31	3,431.70	1,092.39	75	819.29
116th St.	1,570.73	836.41	343.87	4	1,375.48	400.00	135.00	1,910.48	2,237.80	327.32	100	327.32
167th St.	1,894.44	1,632.11	503.79	3	1,511.37	750.00	125.75	2,387.12	5,226.70	2,839.58	100	2,839.58
Palace	1,408.64	992.72	343.05	3	1,029.15	225.00	80.75	1,334.90	1,686.25	351.35	100	351.35
Seventh Ave.	1,472.85	905.31	339.73	3	1,019.19	375.00	123.00	1,517.19	2,049.20	532.01	100	532.01
State, N. Y.	7,946.27	4,000.66	1,706.70	7	11,946.93	3,000.00	5,120.00	20,066.93	23,169.00	3,102.07	83 1/3	2,585.05
New York	2,488.96	2,203.02	670.28	1	670.28	150.00	32.50	852.78	755.30	97.48	33 1/3	32.49
Triboro	3,754.48	2,841.21	942.24	4	3,768.96	700.00	1,075.03	5,543.99	6,315.60	771.61	100	771.61
Woodside	1,600.50	1,188.73	398.46	3	1,195.38	500.00	84.75	1,780.13	2,495.35	715.22	100	715.22
Akron	1,914.47	2,400.82	616.47	4	2,465.88	754.03	105.12	3,325.03	3,770.15	445.12	100	445.12
Atlanta, Grand	1,252.92	1,966.50		6wk.	3,219.42	414.84	144.57	3,778.83	2,074.20	1,704.63	50	852.31
Dayton	1,442.33	1,339.93		7	2,782.26	2,240.75	219.18	5,242.19	7,481.50	2,239.31	100	2,239.31
Harrisburg	1,213.43	1,134.64		6wk.	2,348.07	1,412.15	193.91	3,954.13	5,326.30	1,372.17	100	1,372.17
Houston	2,226.34	2,043.49		7	4,269.83	1,050.00	176.58	5,496.41	7,552.40	2,055.99	100	2,055.99
Indianapolis	2,165.97	1,735.54		7	3,901.51	2,605.84	309.84	6,817.19	7,692.60	875.41	100	875.41
Valencia	7,178.98	5,882.91		7	13,061.89	2,000.00	3,988.25	19,050.14	18,378.00	672.14	100	672.14
Kings	3,828.00	6,383.88		7	10,211.88	1,500.00	230.75	11,942.63	15,553.20	3,610.57	100	3,610.57
Pitkin	4,639.77	5,960.16	1,514.27	4	6,057.08	700.00	1,225.61	7,982.69	7,141.95	840.74	100	840.74
Kansas City, Midland	3,422.14	6,667.72		7	10,089.86	2,000.00	280.95	12,370.81	10,537.90	1,832.91	100	1,832.91
Nashville Vendome	1,290.75	804.89		6wk.	2,095.64	1,582.75	181.25	3,859.64	6,331.00	2,471.36	100	2,471.36
Reading	1,351.40	1,375.56		6wk.	2,726.96	1,647.41	212.58	4,586.95	7,363.29	2,776.34	100	2,776.34
Rochester	3,274.20	3,081.29		7	6,355.49	1,239.50	3,651.50	11,246.49	10,161.45	1,085.04	100	1,085.04
St. Louis	4,489.10	3,254.70		7	7,743.80	2,750.00	457.83	10,951.63	12,790.05	1,838.42	100	1,838.42
Wilmington	1,049.22	246.58		6wk.	1,295.80	1,459.78	137.58	2,893.16	4,188.40	1,295.24	100	1,295.24

Total \$54,029.90

Figures in italic appear in red on original.



## Report of Special Master.

## COMPILATION TO TAKE THE PLACE OF DEFENDANTS' EXHIBIT L-8.

Theatre	1 Payroll and Trade Bills for Entire Week	2 Overhead for Entire Week	3 1 & 2 Reduced to Per Diem Basis	4 No. of Days Letty Lynton Played	5 Amt. of 1 & 2 Applicable to Letty Lynton	6 Cost of Letty Lynton	7 Cost of Other Attractions	8 Total Chargeable to Letty Lynton 5 Plus 6 and 7	9 Box Office Receipts	10 9 less 8	11 Loew's % of Interest	12 Profit or Loss
Alpine	\$1,830.37	\$712.28	\$363.23	3	\$1,089.69	\$450.00	\$110.75	\$1,650.44	\$2,102.20	\$451.76	50	225.88
Burland	1,846.41	847.26	384.81	3	1,154.43	600.00	125.75	1,880.18	3,628.25	1,748.07	50	874.03
Burnside	1,730.89	1,099.29	404.31	3	1,212.93	600.00	110.75	1,923.68	3,800.25	1,876.57	95	1,782.74
Gates	3,771.13	1,689.71	780.12	4	3,120.48	800.00	1,060.75	4,981.23	6,461.25	1,480.02	53.89	797.58
Inwood	1,514.04	762.42	325.20	3	975.60	375.00	78.25	1,428.85	1,638.50	209.65	66.67	1,397.73
New Rochelle	2,161.90	1,486.97	521.26	3	1,563.78	675.00	112.25	2,351.03	3,976.35	1,625.32	42	682.63
Premier	1,919.43	1,691.63	515.86	3	1,547.58	550.00	125.75	2,223.33	3,267.90	1,044.57	50	522.28
Rio	1,616.47	1,259.98	410.92	3	1,232.76	390.00	97.25	1,630.01	2,874.05	1,244.04	50	622.02
Spooner	1,461.63	962.19	343.40	2	686.80	250.00	58.00	994.80	1,155.35	160.55	50	80.27
Victoria	1,672.57	1,476.72	449.89	3	1,349.67	300.00	330.00	1,979.67	2,006.95	27.28	56.25	15.34
Victory	1,280.79	595.50	268.04	3	804.12	200.00	89.50	1,093.62	1,127.45	33.83	75	25.37
Warwick	1,275.37	310.84	226.60	3	679.80	150.00	83.25	913.05	1,007.30	94.25	50	47.12
Yonkers	3,321.73	1,017.32	619.86	4	2,479.44	700.00	1,281.86	4,461.30	3,950.65	510.65	66.67	340.45
Boston Orpheum	4,791.48	3,654.49		7	8,455.97	1,250.00	3,197.58	12,903.55	15,847.70	2,944.15	50	1,472.07
Cleveland, Allen	2,768.57	3,543.08		7	6,311.65	2,103.82	352.62	8,768.09	13,307.65	4,539.56	86.71	3,936.25
Cleveland, Granada	1,450.46	1,824.46	467.84	4	1,871.36	275.00	55.12	2,201.48	2,303.90	102.42	86.71	88.80
Cleveland, Mall	1,118.74	873.80	284.64	4	1,138.56	125.00	39.12	1,302.68	925.05	377.63	86.71	327.44
Cleveland, Park	1,503.16	1,988.18		7	3,491.34	500.00	85.16	4,076.50	5,005.85	929.35	86.71	805.83
Evansville, Victory	1,044.65	2,157.94	457.51	4	1,830.04	300.00	110.00	2,240.04	2,944.00	703.96	50	351.98
London, Loew's	1,041.99	1,229.97		6wk.	2,271.96	750.00	240.00	3,261.96	2,670.66	591.30	25	747.82
Toledo, Valentine	1,410.31	514.97		7	1,925.28	1,250.71	292.62	3,468.61	5,002.85	1,534.24	50	767.12
Toronto, Yonko St.	2,189.71	2,653.18		6wk.	4,842.89	1,750.00	550.00	7,142.89	6,157.88	985.01	58.75	578.69
Washington, Palace	4,841.01	2,015.53		7	6,856.54	5,811.70	429.60	13,097.84	17,623.40	4,525.56	71.25	3,224.46
White Plains, State	1,347.80	904.73	321.79	4	1,287.16	1,232.59	86.08	2,605.83	3,541.65	935.82	37.50	350.93
Total												\$16,676.03

Figures in italic appear in red on orig.

## Total

## 3055

3056

3057



## Report of Special Master.

## COMPILATION TO TAKE THE PLACE OF DEFENDANTS' EXHIBIT L-10.

Theatre	1 Payroll and Trade Bills for Entire Week	2 Overhead for Entire Week	3 1 & 2 Reduced to Per Diem Basis	4 No. of Days Letty Lynton Played	5 Amt. of 1 & 2 Applicable to Letty Lynton	6 Cost of Letty Lynton	7 Cost of Other Attractions	8 Total Chargeable to Letty Lynton 5 Plus 6 and 7	9 Box Office Receipts	10 9 less 8	11 Loew's % of Interest	12 Profit or Loss
Bayridge	\$2,491.00	\$1,457.85	\$564.12	4	\$2,256.48	\$800.00	\$1,038.61	\$4,095.09	\$5,554.25	\$1,459.16	50	\$729.58
Canal	1,466.01	1,640.64	443.80	3	1,331.40	375.00	86.50	1,792.90	2,039.15	246.25	100	246.25
Embassy, No. Bergen	1,383.03	856.76	319.68	3	959.04	689.39	120.75	1,769.18	3,446.95	1,677.77	50	838.88
Grand	2,346.12	2,246.04	656.02	3	1,968.06	600.00	110.75	2,678.81	5,678.20	2,999.39	100	2,999.39
Jersey City	6,245.25	4,629.87		7	10,875.12	1,500.00	2,874.65	15,249.77	21,318.90	6,069.13	100	6,069.13
175th St.	3,031.62	4,802.93	1,119.22	4	4,476.88	1,200.00	136.75	5,813.63	8,334.45	2,520.82	100	2,520.82
Oriental	2,158.26	1,987.72	592.28	4	2,369.12	1,000.00	146.75	3,515.87	5,732.00	2,216.13	66.67	1,477.42
72nd Street	2,809.56	3,517.66	903.88	3	2,711.64	750.00	148.50	3,610.14	4,818.30	1,208.16	100	1,208.16
Paradise	7,445.35	5,143.80	1,798.35	7	12,589.15	2,000.00	4,478.47	19,067.62	17,999.60	1,068.02	100	1,068.02
State, Providence	2,558.32	4,806.47	1,052.11	7	7,364.79	2,500.00	221.25	10,086.04	12,407.20	2,321.16	100	2,321.16
State, Syracuse	2,833.55	4,999.53	1,119.01	7	7,833.08	1,400.00	3,728.56	12,961.64	12,171.15	790.49	100	790.49
Parkway, Baltimore	1,019.77	537.27	222.43	7	1,557.04	868.75	110.10	2,535.89	4,482.15	1,946.26	50	973.13
Columbus, Broad	1,766.11	3,519.04	755.02	7	5,285.15	2,629.08	267.62	8,181.85	9,133.10	951.25	50	475.62
State, Louisville	1,871.22	2,839.96	674.45	7	4,711.18	2,241.62	219.16	7,171.96	8,381.70	1,209.74	50	604.87
Valencia, Baltimore	1,201.47	2,135.09	476.65	7	3,336.56	387.49	105.10	3,829.15	2,583.30	1,245.85	30	373.75
Stanley, Baltimore	2,430.86	2,970.73	771.65	7	5,401.59	5,483.08	317.60	11,202.27	14,054.95	2,852.68	30	855.80
State, Boston	2,692.74	4,040.66	947.62	7	6,733.40	3,500.00	321.33	10,554.73	13,564.50	3,009.77	50	1,504.88
State, Norfolk	1,481.90	1,713.62	456.50	6wk.	3,195.52	1,484.57	210.50	4,890.59	5,938.25	1,047.66	33.33	349.22
Loew's Richmond	1,447.59	1,387.16	404.95	6wk.	2,834.75	2,371.37	267.60	5,473.72	8,742.65	3,268.93	33.33	1,089.64
Loew's Canton	1,660.16	1,854.03	502.02	4	2,008.08		120.12	2,128.20	2,539.45	411.25	100	411.25
Penn, Pittsburgh	5,576.67	8,370.36	1,949.43	6wk.	13,947.03		3,768.12	17,715.15	16,412.05	1,303.10	44.12	574.92
Total												\$21,868.02

Figures in *italic* appear in red.

## Report of Special Master.

## COMPILATION TO TAKE THE PLACE OF DEFENDANTS' EXHIBIT L-12.


Theatre	1 Payroll and Trade Bills for Entire Week	2 Overhead for Entire Week	3 1 & 2 Reduced to Per Diem Basis	4 No. of Days Letty Lynton Played	5 Amt. of 1 & 2 Applicable to Letty Lynton	6 Cost of Letty Lynton	7 Cost of Other Attractions	8 Total Chargeable to Letty Lynton 5 Plus 6 and 7	9 Box Office Receipts	10 9 less 8*	11 Loew's % of Interest	12 Profit or Loss
Broadway	\$1,563.45	\$594.33	\$308.25	3	\$924.75	\$600.00	\$95.75	\$1,620.50	\$3,344.15	\$1,723.65	50	\$861.82
Freeman	1,178.03	631.26	258.47	3	775.41	300.00	82.00	1,157.41	1,722.10	564.69	50	282.34
Mt. Vernon	1,712.31	1,077.62	398.56	4	1,594.24	800.00	145.75	2,539.99	3,661.15	1,121.16	33.33	373.72
Plaza	1,607.06	1,080.62	383.95	4	1,535.80	800.00	159.00	2,494.80	4,087.05	1,592.25	33.33	530.75
Prospect	1,705.82	1,229.68	419.35	3	1,258.05	675.00	125.75	2,058.80	3,966.30	1,907.50	33.33	635.83
Sheridan	1,706.67	1,521.84	461.21	3	1,383.63	750.00	410.75	2,244.38	4,923.45	2,679.07	50	1,339.53
Willard	1,684.98	852.06	362.43	3	1,087.29	675.00	125.75	1,888.04	3,722.35	1,834.31	33.33	611.43
Fox Atlanta	3,997.63	2,200.57	885.45	6wk.	6,198.20	523.06	3,300.40	10,021.66	10,092.25	70.59	50	35.29
										Total		\$4,670.71

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**MICRO CARD**

TRADE MARK 

**22**

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**65**



**1417**

*Report of Special Master.*

3064

**CULVER ACCOUNTING.**

1. The defendants claim that the complainants in this proceeding are not entitled to share in any of the profits made by reason of the sale or use of the picture LETTY LYNXON in foreign countries inasmuch as the United States Copyright Act cannot be held to have any extraterritorial effect.

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2. The Culver Export Corporation (hereinafter called Culver) is one of the defendants in this proceeding, and in the decree of the District Court referred to on page 2 of this report Culver is held to have infringed and violated the complainants' copyright. Culver, as appears from Defendants' Exhibit 17, is a wholly owned subsidiary of Metro-Goldwyn Pictures Corporation and is a domestic corporation with offices at 1540 Broadway, New York City (N. Y. S. M., 1009).

"The Culver Export Corporation at that time had entire charge of the marketing of MGM pictures outside of the United States and Canada" (Testimony of Loew, N. Y. S. M., 991).

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3. Culver had a large number of wholly owned subsidiaries and these subsidiaries are listed on the second page of Defendants' Exhibit 17. The gross business of what Mr. Loew called the "Foreign Department" in 1933 was almost fifteen and one-half million dollars (N. Y. S. M., 994). In other words, this was the gross business of Culver.

4. It is clear from the testimony of Mr. Loew (N. Y. S. M., 989, *et seq.*) that Culver was simply an agency used for the purpose of handling the foreign business of distribution and exhibition of Loew's, Inc. pictures—and accordingly, I find this to be the fact.



*Report of Special Master.*

5. It is also clear from Mr. Loew's testimony and from Defendants' Exhibit 21 that the foreign subsidiaries of Culver were merely agents used by Culver for the distribution and exhibition of pictures in the various countries in which they were incorporated and accordingly I find this to be the fact. 3067

6. It is also clear from the testimony of Mr. Loew, above referred to, that the central control and executive direction of these foreign subsidiaries rested in the executive offices of Culver located at 1540 Broadway, New York City, that is, in the general New York offices of Loew's, Inc., and I find this to be the fact. 3068

7. Having found these facts, I reject defendants' contention basing my rejection on the plain language of the decree and on the fact that Culver has done in the United States certain of the acts enumerated in the decree for which it is held accountable by the decree.

8. Under the decree appointing me Special Master, I am instructed "to report separately the amount of such gains and profits of the defendants obtained from all sources outside the United States".

9. The defendant, Culver, which is a wholly owned subsidiary of the defendant, Metro-Goldwyn Pictures Corporation and which in turn owns 100% interest in various subsidiaries distributing in foreign countries with the exception of the distribution company in Sweden (Defendants' Exhibit 17), has filed an account for itself and for its foreign subsidiaries (Defendants' Exhibits 20 and 21). 3069

10. Culver and its subsidiaries handled the distribution of the defendants' films throughout the world outside Continental United States and Canada. The total film rental income received by all of the foreign subsidiaries

*Report of Special Master.*

3070 from the picture LETTY LYNTON amounted to \$414,986.41 (Defendants' Exhibit 20, N. Y. S. M., 451).

11. The film rental income reported on Defendants' Exhibit 20, amounting to \$2,876.10, represents income from the picture LETTY LYNTON mainly from the United States Navy or steamship lines, sold direct by Culver instead of through a subsidiary (N. Y. S. M., 452).

3071 12. The total film rental income received by Culver and its subsidiaries from the distribution of LETTY LYNTON outside of the United States and Canada amounts to \$417,862.51 (Defendants' Exhibit 20, N. Y. S. M., 452).

13. From this sum should be deducted the sum of \$142,339.84, which is the total of all monies from LETTY LYNTON retained by the foreign subsidiaries of Culver and accounted for by them in Defendants' Exhibit 21 (Defendants' Exhibit 20, N. Y. S. M., 452).

14. In other words, Culver in Defendants' Exhibit 20 is accounting for \$275,522.67 of the total film rental income derived from the picture LETTY LYNTON by Culver and its subsidiaries (Defendants' Exhibit 20, N. Y. S. M., 452).

3072 15. The defendant Culver claims that a share of its distribution expense should be deducted from this gross film rental income and in order to determine what share it sets forth on Defendants' Exhibit 20-A the total film rental income from all pictures received by Culver during the year in question and deducts from this the amount retained by the foreign subsidiaries and the net result is a net film rental income from all pictures received by Culver during the year in question of \$10,630,429.70. It then sets up what it claims to be the distribution expense of Culver less certain profits on exchange and certain miscellaneous income and finds that its total distribution

*Report of Special Master.*

expense amounts to \$484,058.15 and that this amount is 3073  
 4.55% of the total net film rental income. Accordingly, it  
 claims a deduction of \$12,536.28, which sum amounts to  
 4.55% of Culver's share of the film rental income from  
 LETTY LYNTON; as set forth on Defendant's Exhibit 20.  
 Complainants reject this claim on the ground that Culver  
 is not shown to have performed any useful function in  
 distributing LETTY LYNTON. I shall allow Culver in this  
 accounting the sum of \$9,805.79 as a credit for distributing  
 expense and I shall give my reasons for so doing hereafter  
 in paragraphs 33-36, both inclusive, when considering the  
 allowance to be made for distributing expense to the foreign  
 subsidiaries of Culver.

16. On Defendant's Exhibit 20-D is shown what the 3074  
 defendant claims was the production cost to the Culver  
 of the picture LETTY LYNTON. The first item of this exhibit  
 —the English version—that is 25% of the cost of produc-  
 tion to the Metro-Goldwyn Pictures Corporation, must be  
 altered in view of the corrected cost of production as found  
 by me in the accounting herein filed of the Metro-Goldwyn  
 Pictures Corporation (see paragraph No. 35) and instead  
 of \$106,582.99 this item should be \$82,980.89. It is proper  
 to say here that this percentage (25%) of the cost of pro-  
 duction charged by the Pictures Corporation against Culver  
 may properly be accepted as a satisfactory percentage  
 provided the complainants are held to be entitled to recover 3075  
 in this proceeding against the Culver. In the event that  
 the court should hold that the complainants are not en-  
 titled to recover against the Culver, then it would seem to  
 be fair to increase the percentage of the production cost  
 which Culver should bear, thereby reducing the cost of  
 production of the Pictures Corporation. As is pointed out  
 by the complainants in their memorandum (p. 43), if you  
 take the basis of the relative receipts of Culver from the  
 foreign distribution and the other defendants from the  
 domestic distribution, it will be found that of the total

*Report of Special Master.*

3076 receipts Culver's share amounted to 35.65% and it would seem that if Culver is *not* to be held accountable in this action it would be fairer for Culver Export Corporation to assume 35.65% of the negative cost of this picture instead of the 25% charged against it on the books of the Pictures Corporation. In the event that it is held by the court that Culver is *not* accountable to these complainants, the accounting of the Pictures Corporation as herein found by me should be recalculated and the cost of production credited to the Pictures Corporation should be reduced in line with the facts expressed herein.

3077 17. There is no dispute about the negative cost of the German, French and Italian versions as listed on Defendants' Exhibit 20-D, and, as pointed out on pages 19 and 20 of the Objections filed to this report by the defendants, the charges claimed by the defendants of \$1,500 in each instance, representing overhead, appear to have been accepted by the complainants and accordingly I shall allow these items.

18. There is no dispute regarding the other items listed on Defendants' Exhibit 20-D and accordingly I allow them as stated thereon.

3078 19. In line with the above findings, I restate Defendants' Exhibit 20-D to read as follows:

## Negative Cost

English Version (25% from Metro-Goldwyn Pictures Corp'n)		\$ 82,980.89
German Version	\$12,600.50	
French "	13,619.33	
Italian "	10,741.10	
		<hr/>
		36,960.93
		<hr/>
		\$119,941.82



*Report of Special Master.*

## Prints

3079

French Version	7,373.18
German "	9,801.95
Italian "	3,592.79
Spanish "	2,275.70
English "	22,001.90

45,045.52

E. R. P. I. Royalty	3,456.00
German Electric Co. Royalty	2,468.00
Music Royalty	1,046.98

6,970.98 3080

Total Production Cost Culver  
Export Corporation

\$171,958.32

and in this form I find that the cost of production properly credited to the Culver Export Corporation in its account as set forth in Defendants' Exhibit 20 should be \$171,958.32.

20. The final item on Defendants' Exhibit 20 is a claim for an allowance on the part of the defendants for Federal income taxes. I disallow this claim for the reasons hereinafter stated in the closing pages of this report.

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21. I shall now restate the first page of Defendants' Exhibit 20 pursuant to the findings heretofore set forth:

Reference to  
Paragraphs  
of Findings  
Numbered

3 Film Rental Income by Foreign Subsidi- aries	\$414,986.4.
4 Film Rental Income— Direct	2,876.10

*Report of Special Master.*

3082	5	Film Rental Income	\$417,862.51
	6	Less: Retained by Foreign Subsidiaries	142,339.84
			<hr/>
	7	Culver Share Film Rental	\$275,522.67
	8	Distributing Expense	9,805.79
			<hr/>
			\$265,716.88
	9-12	Total Production Cost	171,958.32
		(Both inc.)	<hr/>

Net Income from

3083

LETTY LYNTON

\$93,758.56

22. The accounting of the foreign subsidiaries of Culver is contained in Defendants' Exhibit 21. There is no dispute about the item "Film Rental Income" listed at \$414,986.41 and the deduction therefrom of the Culver Export Corporation's share amounting to \$272,646.57, leaving a net "Film Rental Income" to be accounted for in this account of \$142,339.84, and accordingly I find these figures to be correct.

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23. The distributing expense listed on this schedule of \$84,260.05 is challenged by the complainants and I will revert to this item hereafter.

24. There is no dispute about the minority interest share of Sweden amounting to \$526.52 and there is no dispute regarding the item "Cost of prints—England" amounting to \$6,619.27, and accordingly I find these items to be correct.

25. Complainants challenge in their brief the inclusion in the cost of negatives of the Spanish version an item of \$2,670.80 for overhead. This appears in the breakdown of the cost of the Spanish version on De-

*Report of Special Master.*

defendants' Exhibit 4 and the testimony regarding it appears on N. Y. S. M., 109-132, which testimony relates to Defendants' Exhibits 7 and 8. Subsequently these exhibits were withdrawn and returned to counsel for the defendants (N. Y. S. M., 626). Counsel for the defendants were under the impression that counsel for the complainants had at that time agreed to the item of cost of Spanish version including the overhead. Counsel for the complainants now advise me that under the circumstances the complainants withdraw their objection to the item "Cost of Negative, Spanish Version" in the sum of \$7,638.94. Accordingly, I find this to be a proper credit to the defendants in the account—Exhibit 21.

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26. I shall now consider the item "Distributing Expense" appearing on Defendants' Exhibit 20 in the sum of \$12,536.28 and the item "Distributing Expense" appearing on Defendants' Exhibit 21 in the sum of \$84,260.05.

27. The defendants' theory with reference to the distributing expense appearing on Defendants' Exhibit 20 in the sum of \$12,536.28 may be understood by an examination of Defendants' Exhibits 20-A, 20-B, and 20-C. The distributing expense of Culver less certain items is there figured to be \$484,058.15 and this sum amounts to 4.55% of the net film rental income of Culver. Accordingly, this percentage of Culver's share of the film rental income derived from the foreign distribution of the picture LETTY LYNTON and amounting to \$275,522.67, which percentage amounts to \$12,536.28, is taken as the distributing expense chargeable to the picture LETTY LYNTON in this accounting and deductible in the accounting of Culver from Culver's share of the film rental income from this picture. As I have stated in the other accountings filed herein, I do not approve of this method of estimating the share of the distributing expense which should be charged

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*Report of Special Master.*

088 against LETTY LYNTON for the simple reason that this method unduly penalizes a successful picture. As I have indicated in the other accountings, it seems much fairer to determine as nearly as possible how many feature pictures (or the equivalent of feature pictures) were distributed during the year in question and then divide the distribution expense numerically among those pictures.

089 28. In Defendants' Exhibit 21 with its attached schedules, the defendants set forth in great detail the distributing expense of the foreign subsidiaries of Culver by countries. After a careful consideration of Defendants' Exhibits 21-B-1, B-2 and B-3 I find that the total distributing expense as set forth therein by countries is an accurate statement of said expense. The specific objections raised by the complainants and set forth on pages 47 and 48 of Complainants' Memorandum, I shall disallow. The principal objections by complainants relate to the items which appear on Defendants' Exhibits 21-B-1, B-2 and B-3 under the title "New York Overhead Charged (Salaries and Travelling—Field Supervisors)" totaling \$178,538.33 and the items under the heading "Depreciation of Equipment" totaling \$137,810.39.

090 29. So far as the items under "New York Overhead" are concerned, these seem to me to be proper and reasonable expenses of distribution as explained in N. Y. S. M. 473, by defendants' accountant and I find that they have not been successfully challenged by the complainants by any testimony in the record.

30. So far as the items listed under "Depreciation Account", it is true that there does not appear in the testimony a detailed schedule of the value of the equipment of these foreign subsidiaries upon which the depreciation is based but I agree with the defendants' contention that to submit such detailed schedules in this account when



*Report of Special Master.*

the items were not specifically attacked during the hearings would have simply led to an unnecessary and burdensome development of the proof, and accordingly I shall allow this item.

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31. The other objections of the complainants are minor in character and may be disregarded.

32. Accordingly, I find that the total distributing expense of the foreign subsidiaries as set forth on Defendants' Exhibits 21-B-1, B-2 and B-3 amounts to \$3,046,026.96.

33. The defendants' contention as appears in their Exhibits 21-B-1, B-2 and B-3 is that the proper method for determining that proportion of the distributing expense which should be borne by the picture LETTY LYNTON is to determine the percentage of the distributing expense of the film rental income in each country by taking the total film rental income in each country and the total distributing expense in that country and determining what percentage of the income the expense represented. I have rejected this theory in the other accounts filed herein and have determined that the fairest method of ascertaining the amount of the distributing expense which should be chargeable against the picture LETTY LYNTON was to divide the total distributing expense by the number of feature pictures (or equivalent of feature pictures) distributed during the year in question.

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34. Adopting this theory, I find that the total distributing expense as set forth in Defendants' Exhibits 21-B-1, B-2 and B-3 amounts to \$3,046,026.96 and that the total distributing expense as stated on Defendants' Exhibit 20-A of Culver to be \$484,058.15 and that the total distributing expense of Culver and its foreign subsidiaries amounts to the sum of these two figures, that is \$3,530,085.11.

*Report of Special Master.*

3094 35. The evidence in the record as to the number of  
 feature pictures (or the equivalent of feature pictures)  
 distributed by Culver and its foreign subsidiaries is not, it  
 is true, quite as clear as the evidence respecting the number  
 of feature pictures (or equivalent of feature pictures)  
 distributed during the year in question by the defendants  
 domestically, that is, in continental United States. It is  
 true that Culver distributed all of the feature pictures  
 produced by the defendants during the year in question  
 and also the shorts but the news reels were not distributed  
 abroad (N. Y. S. M., 967-8). However, some other outside  
 producers' pictures were distributed (N. Y. S. M., 82).  
 0095 It is true that all of these pictures were not distributed  
 in all of the countries covered by Culver though LETTY  
 LYNTON was distributed in forty of these foreign countries,  
 in other words, in practically all of them for there were  
 forty corporations (N. Y. S. M., 379. As I stated, the  
 evidence is not clear as to just how many feature pictures  
 and the equivalent of feature pictures (shorts and outside  
 producers' pictures) on an average might be said to have  
 been distributed during the year in question by Culver  
 and its subsidiaries. After a careful consideration of what  
 evidence there is, it has seemed to me fair to say that  
 forty-five (45) feature pictures (or the equivalent of  
 feature pictures) were on an average distributed by Culver  
 0096 and its foreign subsidiaries during the year in question,  
 and accordingly in order to determine the amount of the  
 distributing expense properly chargeable against LETTY  
 LYNTON in the accounting filed by the Culver Export Corpo-  
 ration and its subsidiaries the total distributing expense  
 must be divided by 45 resulting in a figure of \$78,446.33.

36. I find, therefore, that since the total distributing  
 expense allocated to LETTY LYNTON claimed by defendants  
 under Exhibits 20 and 21 amounts to \$125,336.28 (Exhibit  
 20) plus \$84,260.05 (Exhibit 21) is the sum of approxi-

*Report of Special Master.*

namely \$96,000.00, one-eighth of the sum of \$78,446.33 or 3097. \$9,805.79 should be allowed as the distributing expense in the account of Culver (Exhibit 20) and seven-eighths of the sum of \$78,446.33 or \$68,640.54 should be allowed as distributing expense in the account of the foreign subsidiaries (Exhibit 21). These amounts, therefore, will take the place and stead of the amounts listed on Defendants' Exhibits 20 and 21.

37. With reference to the claims for Federal income taxes listed as the final item on Defendants' Exhibit 21, I disallow this claim for the reasons hereinafter stated in the closing pages of this report.

38. I shall now restate the first page of Defendants' Exhibit 21, pursuant to the findings heretofore set forth:

Reference to  
Paragraphs  
of Findings  
Numbered

15	Film Rental Income (Per Schedule)	\$414,986.41	
15	Less Culver Export Corp. Share (Per Schedule)	272,646.57	3099
15	Net Film Rental In- come (Per Schedule)	\$142,339.84	
19-29	Distributing Expense	68,640.54	
Both inc.)		\$73,699.30	
17	Less Minority Interest Share—Sweden	526.52	
		\$73,172.78	

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17	Cost of Prints—Eng- land	\$6,619.27	
18	Cost of Negative— Spanish Version	7,638.94	
		<hr/>	14,258.21
	Net Income from "Letty Lynton"		\$58,914.57

## INCOME TAXES.

The defendants in effect claim they should be allowed to deduct from any amount found by me to be due the complainants as profits from "Letty Lynton" an amount which they claim would be the equivalent of Federal income taxes at the rate of  $14\frac{1}{2}\%$  of such profits.

The Circuit Court of Appeals in this Circuit through Judge Chase stated in *Stromberg Motor Devices Co. v. Zenith-Detroit Corporation*, 73 F. (2d) at page 65:

"We think the defendant's honest belief in its right to manufacture the infringing carburetors was sufficiently shown to entitle it to a deduction for income taxes paid which will leave it accountable to the plaintiff for only the profits of which it actually has had the benefit."

In considering this question of income taxes, it is necessary to keep specifically in mind the difference between the word "profit" and "taxable profit". If there were any evidence before me that the amount of net profit from "Letty Lynton", which I am finding was realized by the defendants in this case and for which I find them accountable to the complainants was "taxable profit" to the defendants, then I should have no difficulty in allowing the defendants to deduct from the amount of profit which I am finding due to the complainants the proper amount of income



*Report of Special Master.*

axes on that profit if the defendants did not recover back the amount of such taxes from the taxing authorities. However, the defendants have not submitted to me evidence from which I can in any way find that the profit from "Letty Lynton" which I am finding due these complainants was all taxable profit to the defendants. It may be that if the defendants are within the statutory period of limitations to file claim for refund from the taxing authorities for the amount of tax which they might claim was over-paid on the basis of the deduction from their "taxable profit" of the amount of profit which I am finding to be "profit" from the production and distribution of "Letty Lynton", the taxing authorities would be able to show that the specific amounts which I have found to be "profit" from the production and distribution of "Letty Lynton" is not "taxable profit" under the revenue statutes. Accordingly, on the basis of the record before me, I am not able to allow any deduction at this time by way of credit to these defendants for taxes upon the profit from the production and distribution of "Letty Lynton". Believing as I do, however, that these defendants should have whatever credit they are entitled to so that these complainants may not be unjustly enriched, I suggest that the court in its decree may set aside a special escrow, subject to the further order of this Court, sum equivalent to  $14\frac{1}{2}\%$  of the amount which I have found as aggregate profit from the production and distribution of "Letty Lynton", to be held in said escrow subject to the following terms and conditions:

(a) Within ninety (90) days from the time when the defendants shall have paid to the complainants the judgment directed by this Court to be paid, the defendants shall file with the complainants' attorneys and with this Court and the aforesaid special escrow depository a written statement showing

(1) the amount of net taxable profits of the

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*Report of Special Master.*

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defendants upon which they paid Federal income taxes for the year or years in which "Letty Lynton" was produced and distributed, itemized so as to properly show the amount of said Federal income taxes paid by each company from which any of the profit which I have found to be profit from the production and distribution of "Letty Lynton" was received by the defendants;

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(2) the allocation of the profit which I have found to be profit from the production and distribution of "Letty Lynton" to the respective proper tax-paying sources from which said profit was realized;

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(3) a recapitulation of the net taxable profits upon which the defendants would admit to the Commissioner of Internal Revenue it should be taxed after the deduction of the profit which I have found to be profit from the production and distribution of "Letty Lynton";

(4) how much, if any, of the aforesaid escrow deposit the defendants can properly show to be due them as a result of any change in the net taxable profits of the defendants after the proper calculation thereof when the amount of profit I have found to be profit from the production and distribution of "Letty Lynton" is deducted and properly allocated as above-mentioned.

Such statement shall be prepared by such individuals or firm as shall customarily prepare the Federal income tax returns of the defendants and shall be certified correct by the auditors of the defendants. In such statement the defendants shall also state whether the Statute of Limitations contained in the appropriate U. S. Internal Revenue Act has run against the filing by the defendants of any claim for

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refund for the excess of taxes which the defendants may claim to have been paid by them as shown by the foregoing calculation and whether the income tax returns of the defendants for the year or years in question have been settled and determined with the Commissioner of Internal Revenue or are still open for final determination.

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Upon filing such statement, the defendants may elect therein to accept from said escrow deposit the amount shown by the aforesaid calculations to have been over-paid to the Federal Government on account of said income taxes provided that the defendants deposit with the attorneys for the complainants a bond in such amount and with such surety as the Court may determine by the terms of which the complainants may be protected so that if the defendants recover at any time in the future from the Federal Government the amount of such over-payment of taxes, such amount shall be paid to these complainants, and upon making such election the Court may order such amount to be paid to the defendants from said escrow deposit and any balance thereof to be paid to these complainants.

3110

(b) If the defendants shall not elect to accept from such escrow deposit the aforesaid amount of alleged excess taxes paid but shall decide to deduct the amount of any judgment paid to these complainants in this case from their taxable income for the year in which said judgment shall have been paid, the defendants, in lieu of filing the statement referred to in sub-paragraph (a) above, may within said period of ninety (90) days file a statement with the complainants attorneys and with this Court and the special escrow depositary notifying the addressees that the defendants have so elected to deduct the amount paid to these complainants from the taxable

3111

*Report of Special Master.*

3112

income of the defendants for the year in which said judgment is paid.

In that event, the sum heretofore prescribed to be set aside in escrow shall be kept in escrow until ninety days after the defendants shall file their Federal income tax return or returns for the year in which the judgment in this case shall be paid. Immediately after filing such return or returns, the defendants shall file with the complainants' attorneys and with this Court and the Special Escrow Depository a copy of said Federal income tax return or returns, together with a statement showing:

3113

(1) the amount of Federal income taxes actually paid by the defendants for the year or years in which LETTY LYNTON was produced and distributed;

(2) the amount of Federal income taxes which the defendants would have paid if their income tax return or returns were properly adjusted to reflect the deduction from their taxable income for the year or years in which LETTY LYNTON was produced and distributed of so much or all of the amount of the profit from the production and distribution of LETTY LYNTON comprised within the judgment of this Court paid by the defendants (but exclusive of interest thereon) as might be deductible in accordance with the appropriate income tax law and regulations thereunder;

3114

(3) the amount of Federal income taxes actually paid by defendants on income for the taxable year in which the judgment in this case is paid by the defendants to the complainants;

(4) the amount of Federal income taxes which the defendants would have paid for the taxable year within which the judgment in this case is paid by



*Report of Special Master.*

the defendants to the complainants if their income tax return or returns were adjusted to exclude therefrom any credit or deduction from the taxable income of the defendants for said taxable year of any amount paid to the complainants upon the judgment in this case.

3115

The amount remaining after deducting number (2) from (1) above represents the amount by which the defendants would be unjustly penalized if the defendants were unable to recover the amount thereof from the Federal income taxing authorities by way of claim for refund, provided that said defendants did not otherwise receive the benefit of such amount through the deduction of any amount of the judgment which the defendants may pay to these complainants from the taxable income of the defendants for the year in which said judgment may be paid. Accordingly, it is necessary to ascertain the amount by which item 4 above may exceed item 3. If the amount of the difference by which item 4 may exceed item 3 equals or exceeds the amount by which item 1 exceeds the amount of item 2 then the defendants would not be unjustly deprived of any sum because of the payment by the defendants of Federal income taxes on the amount of profit from the production and exhibition of LETTY LYNTON realized by the defendants during the year in which such production and exhibition was made. Accordingly, on the submission to the Court and to the complainants' attorney of the statement under this paragraph (b) with the four items above mentioned, the Court will be in a position to immediately order so much of the escrow deposit to be paid over to the defendants or to the complainants as may be shown to be due either or both upon the making of the simple calculations I have above stated.

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3117

*Report of Special Master.*

3118

## SUMMARY.

I find that the gains and profits from the use of the picture LETTY LYNTON by the defendant Metro-Goldwyn Pictures Corporation were \$268,861.14

I find that the gains and profits from the use of the picture LETTY LYNTON by the defendant Metro-Goldwyn-Mayer Distributing Corporation were 68,603.42

I find that the gains and profits from the use of the picture LETTY LYNTON by the defendant Loew's, Inc., were 97,466.68

3119

I find that the gains and profits from the use of the picture LETTY LYNTON by the defendant Culver Export Corporation and its subsidiaries were 152,673.13

Total gains and profits from the use of the picture LETTY LYNTON by all defendants \$587,604.37

Respectfully submitted,

GORDON AUCHINCLOSS.

3120

# Defendants' Exceptions to Special Master's Report.

3121

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[SAME TITLE.]

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ON BEHALF OF THE DEFENDANTS HEREIN, AND IN ACCORDANCE WITH RULE 66 OF THE UNITED STATES EQUITY RULES, WE HEREBY FILE THE FOLLOWING EXCEPTIONS TO THE REPORT OF HON. GORDON AUCHINCLOSS AS SPECIAL MASTER, APPOINTED UNDER DECREE OF HON. JNO C. KNOX, DATED JULY 29, 1936, WHICH REPORT WAS FILED IN THE CLERK'S OFFICE OF THIS COURT ON MAY 9, 1938.

(Numeral references herein, unless otherwise indicated, are to pages; "S.M.N.Y." refers to New York testimony; "S.M.C.C." refers to Culver City testimony; "P.R." refers to printed record on appeal to Circuit Court of Appeals.)

3122

## I.

ON BEHALF OF ALL THE DEFENDANTS, EXCEPTIONS ARE TAKEN TO THE FAILURE OR REFUSAL OF THE SPECIAL MASTER TO MAKE THE FOLLOWING FINDINGS:

1. That the commercial value of the motion picture "Letty Lynton" is not wholly or principally attributable to such use in the preparation or production of such motion picture as was made by the defendants of any portion of the play "Dishonored Lady", protected by the plaintiffs' copyright in such play.

3123

See Comparative Analyses of Play (Defendants' Exhibit R-3; P.R. 237-494; S.M.N.Y. 985) and picture (Defendants' Exhibit R-4; P.R. 495-622; S.M.N.Y. 987), trial (Defendants' Exhibit R-2; S.M.N.Y. 984, a separate exhibit which was not printed or incorporated in typewritten record) and play, with comparative references to novel "Letty Lynton" (Defendants' Exhibit R-5; S.M.N.Y. 987, a separate exhibit

*Defendants' Exceptions to Special Master's Report.*

3124 which was not printed or incorporated in typewritten record); all in connection with actual viewing of the motion picture "Letty Lynton" (S.M.N.Y. 934-938).

See testimony of Studio head and heads of Studio departments as to contributions to film pictures in general, apart from and additional to copyrighted property (references to S.M.C.C.) Mayer, 369-409; Strickling, 410-421; Chic, 258-271; Gabourie, 276-286; Bucknall, 287-305; Gibbons, 305-311; Finston, 311-317; Keethe, 318-323; Gray, 324-332; Napp, 333-346; Farrell, 346-349; Hendrickson, 350-352; Kolb, 353-362; Spencer, 362-365; Hendry, 365-368; Benneche, 429-436; Arnold, 436-444; Nicholaus, 444-457; Shearer, 457-477, and (reference to S.M.N.Y.) Rubin, 1117-1129.

3125 See reference under 2. immediately following as to relative drawing power of literary property, stars, producer, director and Metro-Goldwyn-Mayer organization, etc.

2. That at the utmost, not more than 10% of the total net profits made by the defendants from the preparation, production, distribution and exhibition of the motion picture "Letty Lynton", was made because of the infringement by defendants of plaintiffs' copyright in the play "Dishonored Lady".

3126 (References to S.M.C.C.) Mayer, 377-407; Strickling, 411-420; Cohn, 573-596; Zukor, 597-603; (references to S.M.N.Y.) Lichtman, 795-828; Jaycocks, 835-853; Skouras, 853-876; Benas, 878-890; Ripzler, 890-897; Blumberg, 897-910; Notarius, 910-921; Yoost, 921-931; Loew, 999-1009.

3. That prior to the exhibition of the motion picture "Letty Lynton" and starting from May 1, 1931, the defendant Metro-Goldwyn-Mayer Distributing Corporation entered into contracts for its exhibition with individual exhibitors on the printed form of contract which is Defendants' Exhibit No. 16, in which contracts the motion picture,



*Defendants' Exceptions to Special Master's Report.*

later designated as "Letty Lynton", was designated simply as "Production Number 208, Joan Crawford No. 2;" such motion picture was not otherwise designated, nor identified in fact by the title "Letty Lynton" until on or about May 7, 1932, when the motion picture so entitled was released; before May 7, 1932, 7315 contracts with individual exhibitors out of a total of 7666 of such contracts as listed on Defendants' Exhibit No. 15 had been made and executed by said defendant Metro-Goldwyn-Mayer Distributing Corporation.

3127

Deesen, S.M.N.Y. 306-313; Mills, S.M.N.Y. 201; and testimony of exhibitors referred to under 2. hereof.

4. That the commercial value of the motion picture "Letty Lynton" is principally attributable to the stars, Joan Crawford and Robert Montgomery, who played the leading roles therein, to the production and direction by persons well known in the industry and to the public, and to the reputation of the Metro-Goldwyn-Mayer organization.

3128

See same references as under 2. hereof.

5. That in a certain agreement made by and between the plaintiffs and others with Metro-Goldwyn-Mayer Corporation, dated April 17, 1931, it was agreed that contingent upon Metro-Goldwyn-Mayer Corporation being able to secure the approval of the Hays' Office of the use of the play "Dishonored Lady" for motion picture purposes within 30 days therefrom, Metro-Goldwyn-Mayer Corporation would purchase from the plaintiffs the moving picture rights in such play "Dishonored Lady", and that upon such purchase the price to be paid for said rights under said agreement would be the sum of \$30,000; said Hays' Office refused to give its approval to the use of the play for motion picture purposes after application made to secure such approval.

3129

See Defendants' Exhibit R-1, S.M.N.Y. 978-981. (P.R. "Complainants' Exhibit S", 788-803); Barnes, S.M.N.Y.

*Defendants' Exceptions to Special Master's Report.*

130 978, "I hoped very much we would make the sale and the play would be changed."

6. That the only means open to the plaintiffs for the exploitation of their copyrighted play "Dishonored Lady" by production thereof in motion pictures was by selling the motion picture rights therein to some established motion picture producing organization.

Lichtman, S.M.N.Y. 805-807, 824-826.

7. That the market value of the motion picture rights in the play "Dishonored Lady" in the years 1931 and 1932 was not more than \$30,000.

131 See, in addition to references under 5. hereof, Giffen, S.M.N.Y. 1024-1030; Statements of Complainants' Counsel, S.M.N.Y. 1040-1043, 1063-1064; Fleischer, S.M.N.Y. 1044-1048, incorporating Defendants' Exhibits 29-A and 29-B, and Johnson (by stipulation) S.M.N.Y. 1042-1060, incorporating Defendants' Exhibit 30 for Identification.

132 8. That each of said defendants was organized at a time prior to the plaintiffs' production or copyright of the play "Dishonored Lady" with separate and distinct charters, boards of directors and officers, with separate and distinct purposes and functions, and with no purpose on the part of said defendants, or any of them, that their respective organizations, functions or operations would in any respect affect any acts or transactions of said defendants, or any of them, having anything whatever to do with plaintiffs' play "Dishonored Lady" or any use which might be made by the defendants, or any of them, of said play in the production, distribution or exhibition of the motion picture "Letty Lynton".

Defendants' Exhibit 15; Mills, S.M.N.Y. 198-201, 315; Records and Testimony, in general, showing existence of defendant corporations and their several functions and pur-

*Defendants' Exceptions to Special Master's Report.*

poses for years prior to alleged infringement in 1931 or 1932: 313

9. That the acts done or performed by the defendants, or any of them, in the exploitation or handling of the motion picture "Letty Lynton" were done or performed in the same manner and in accordance with the same practice and routine as were followed in the exploitation and handling of other productions of the defendants which involved no questions as to the rights of the defendants, or of any of them, to produce, distribute or exhibit the same.

See same references under 8. hereof.

10. That the defendants, or any of them, in so far as they in the preparation, production, distribution, or exhibition of the motion picture "Letty Lynton", made use of any portion of the play "Dishonored Lady", were not guilty of wilful or deliberate infringement. 3134

See in this connection Special Master's Report, p. 82; opinion of Hand, J., in Circuit Court of Appeals, 81 F. (2d) 49, at p. 54; Judge Woolsey's opinion, 7 Fed. Supp. 837.

See also *Vandenburg v. Concrete Steel Co.* (C.C.A. 2, 1921), 278 Fed. 607, at p. 610.

Thalberg, P.R. 74, 75; Stromberg, P.R. 92; Meehan, P.R. 118, 119; Brown, P.R. 134; Tuchok, P.R. 140-141; all of whose testimony was offered on the accounting, References 9-13, S.M.N.Y. 1048-1050. 3135

11. That the actual damages sustained by plaintiffs because of the infringement by defendants of plaintiffs' copy-right in the play "Dishonored Lady" were \$30,000.

See references under 5. and 7. hereof.

*Defendants' Exceptions to Special Master's Report.*

3136 12. That the damages which in the opinion of the Special Master is just to award plaintiffs, in lieu of actual damages and profits, is \$30,000.

This award of "such damages as to the court shall appear to be just" is to be made under all the circumstances of the case, and particularly where the actual damages suffered by the complainants or the actual profits made by the defendants "because of the infringement", and ascribable to the use of the copyrighted property, are difficult or impossible of ascertainment. See *Douglas v. Cunningham*, 294 U. S. 207.

3137 WE FURTHER EXCEPT, ON BEHALF OF ALL THE DEFENDANTS, AS FOLLOWS:

13. To the failure or refusal of the Special Master to make any finding as to the actual damages sustained by plaintiffs because of the infringement by defendants of plaintiffs' copyright in the play "Dishonored Lady".

3138 The Special Master in his report (pp. 2, 3) purports to place a very literal interpretation on the "usual formula" language of the decree, defining his duties, among which was one "to ascertain and report the amount of complainants' damages", and yet ignores such language of the decree. He says (p. 3): "Complainants in this case are asking for profits." Complainants' counsel at p. 1042 of the New York testimony, referring to damages and profits, said: "I want both." Clearly complainants are not entitled to both, any more than under the patent statute (Section 4921 of the Revised Statutes). Defendants claim, as bearing on the equities of the case, that they are entitled to a finding as to the amount of the actual damages, not for the purpose of awarding both damages and profits to the plaintiffs, but solely for the purpose of showing the inequities of the award of profits of \$587,604.37 in a case where plaintiffs' maximum damages were \$30,000.



*Defendants' Exceptions to Special Master's Report.*

14. To the introductory portion of the report of the Special Master (pp. 2, 3) which shows that for the purposes of the proceedings before him he construed the interlocutory decree of July 31, 1936 as limiting his powers thereunder strictly to a determination of the total net profits derived by the defendants from the production, distribution and exhibition of the picture "Letty Lynton", and as precluding him thereunder from making an apportionment as between such amount of the total net profits as were made "because of the infringement" and such amount thereof as are properly ascribable to such portions and features of the literary material of the film play "Letty Lynton" as were not taken from the copyrighted play "Dishonored Lady", and also such amount thereof as is properly ascribable to the stars, Joan Crawford and Robert Montgomery, who played the leading roles therein, to the production and direction by persons well known in the industry and to the public, and to the reputation of the Metro-Goldwyn-Mayer organization; and to his failure in fact to make such apportionments. 3139 3140

In reversing the lower court, the Circuit Court of Appeals, at the conclusion of its opinion, provided merely for an accounting of damages and profits. All questions as to the amount of the final award, whether dependent on an apportionment of profits or on the substitution of an award "in lieu of actual damages and profits", were to be determined by the Special Master upon the accounting. As said in *Dam v. Kirk La Shelle Co.* (C. C. A. 2, 1910), 175 Fed. 902, "Questions as to the amount of damages or profits ordinarily come up for determination only after the accounting." The language of the decree is that of the customary formula, as pointed out by Judge Denison in *Lawrence-Williams Co. v. Societe Enfants Gombault et Cie* (C. C. A. 6, 1931), 52 F. (2d) 774. In this connection, we have examined many decrees in patent cases. They embody the "customary formula" referred to by Judge 3141

*Defendants' Exceptions to Special Master's Report.*

3142 Denison, and have never been construed as precluding the Special Master from making an apportionment of profits or from making a "reasonable royalty" award under the 1922 Amendment of Section 4921 of the Revised Statutes.

15. To the introductory portion of the report of the Special Master (pp. 2, 3) which shows that for the purposes of the proceedings before him he construed the interlocutory decree of July 31, 1936, as limiting his powers thereunder strictly to a determination of the total net profits derived by the defendants from the production, distribution and exhibition of the picture "Letty Lynton", and as precluding him from making an award thereunder, in lieu of actual damages and profits, of such damages as to him appeared to be just; and to his failure in fact to make such an award in lieu of actual damages and profits.

3143

The comment under 14 hereof is equally applicable here: Section 25(b) of the Copyright Act permits an "in lieu" award where proper and the Special Master requires no other authority for making such an award.

*Schering Pottery Co. v. Steubenville Pottery Co.*  
(D. C. N. D. Ohio, 1934), 9 F. Supp. 384;

*Fleischer Studios v. Ralph A. Freundlich, Inc.*  
(D. C. S. D. N. Y., 1936), 14 F. Supp. 401.

3144 16. To the failure or refusal of the Special Master to make any comparison of Defendants' Exhibits R-4, R-3, R-2, R-5 and the motion picture "Letty Lynton" as actually exhibited to the Special Master, with a view to determining the nature and the extent of the infringement by defendants' motion picture "Letty Lynton" of the complainants' copyrighted play "Dishonored Lady" for the purpose either of apportionment of profits or of making an award of such damages as to him appeared to be just in lieu of actual damages and profits; and to his failure in fact to make such a determination.

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This comparison is necessary in order to make a determination as to the nature and extent of the infringement for the purpose of making any money award. The opinion of the Circuit Court of Appeals (81 F. (2d) 49) shows that the Court considered that the picture "Letty Lynton" contained much that was not taken from the copyrighted play, in which respect that Court was in agreement with Judge Woolsey. 3145

## II.

ON BEHALF OF THE DEFENDANT METRO-GOLDWYN PICTURES CORPORATION (HEREIN CALLED PICTURES CORPORATION), WE RESPECTFULLY EXCEPT TO THOSE PORTIONS OF THE REPORT HAVING TO DO WITH THE ACCOUNTING OF THE PICTURES CORPORATION AS FOLLOWS: 3146

1. To the ruling in Paragraph 2 thereof, which disallows as the Pictures Corporation's share of the distributing expense, which "Letty Lynton" should be charged with, the sum of \$12,505.33, based on the relation of costs of distribution to gross receipts, and which allows in place thereof only the sum of \$8,517.48, upon the theory that all feature pictures distributed during the fiscal year 1932 should bear an equal share of the total distributing expense of the Pictures Corporation for such year for all pictures, and to the portions of Paragraphs 3-10 under the accounting of the defendant Metro-Goldwyn-Mayer Distributing Corporation, which state the reasons for such allowance, and to the findings in Paragraphs 9 and 10 thereof, that during such fiscal year the defendants Pictures Corporation and Distributing Corporation distributed the equivalent of sixty (60) feature pictures, and accordingly excepts to all changes of figures in such accounting based on the rulings herein specified. 3147

Complainants' counsel (S.M.N.Y. 513) asked Mills: "As common practice in almost any industry it is usual and

*Defendants' Exceptions to Special Master's Report.*

48 ordinary to allocate overhead of selling on gross receipts, isn't it, regardless of what it costs to make the thing?" to which Mills replied: "That is right." Under a contract such as Defendants' Exhibit 18, covering all feature pictures licensed for the year, what more practicable or equitable method could be applied than to charge each dollar received under such contract with an equal number of cents as cost of distribution?

19 The Special Master in his example under Paragraph 7 (p. 47) of his report, in applying the ratio 76.87% to the rental income of the Distributing Corporation, overlooks the fact that this high ratio was applicable to a distributing company, used solely for that purpose, which was permitted to receive, to cover this service, only 20% of the total rental income. Under the circumstances, all of the Distributing Company's income might well have been applied to distributing expenses. In the cases stated by the Master, under defendant's corporate set-up, the total net film rental income of picture A would be \$5,000; and of picture B would be \$1,000,000. If the picture "Letty Lynton" had been less successful, it is easy to see how unfairly the Special Master's division of distributing expenses equally among the pictures would work out.

50 Abundant authority will be given the Court for the "gross receipts" basis of division of selling or distributing expense.

The Special Master's ruling in Paragraphs 9 and 10 (pp. 48, 49) of his report, that the defendants distributed the equivalent of sixty (60) feature pictures and that the selling overhead should therefore be divided into 60ths, is wholly arbitrary, as neither shorts nor newsreels involve any comparable selling expense such as is involved in the distribution of feature pictures.

2. To the ruling in Paragraph 5 thereof, which disallows as an item of negative cost the sum of \$2,500.00 listed as a



*Defendants' Exceptions to Special Master's Report.*

departmental overhead charge of the Women's Wardrobe Department, and to the ruling in Paragraph 25 thereof, which purports to compensate for such disallowance merely by adding to General Studio Overhead an overhead charge for this department in the sum of \$76,334.90. 3151

The Master states that this item was fixed by "the judgment of the head of the department." It is apparent that the distribution had been made upon the basis of actual knowledge of work done and materials used in the different productions. Had the department head, Mr. Rapf, not been ill from a stroke of apoplexy at the time of the taking of testimony, this item might have been substantiated more accurately than one based upon a percentage of cost of labor and materials. We submit that the proof substantiated this charge as one properly made in the course of business. Craig, S.M.C.C. 59, 60, 134-140, 608-616; Defendants' Exhibit C-28 (S.M.C.C. 614). 3152

3. To the failure of the Special Master, in allowing in Paragraph 5 thereof as an item of negative cost the sum of \$610.76, listed as a departmental overhead charge of the Musicians Department on Defendants' Exhibit 18-D4, to include such amount in the total of the negative cost of "Letty Lynton", found in Paragraph 35 thereof as \$262,629.61, but instead, to his inclusion of such amount in the General Studio Overhead, found in Paragraph 33 thereof, viz., \$3,849,686.58. 3153

This item was entirely overlooked in the Special Master's draft report. The Special Master in correcting the oversight has doubtless failed to include the item as a part of the total negative cost, as was done in the case of the similar items allowed in this same paragraph. The mistake has been discovered by the defendants' auditors. The final amount of the award, on the basis of the report, should be reduced by this amount of \$610.76.

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3154 4. To the ruling in Paragraph 26 thereof, which disallows as an item of General Studio Overhead the sum of \$500,000. as "Addition to Reserve for Continuities" (Defendants' Exhibit 18-D5).

Craig, S.M.C.C. 619; Keating, S.M.N.Y. 520-587; Defendants' Exhibits Nos. 22, 23 and 24.

In order to operate as a motion picture producer making a large number of pictures annually, it was necessary for the defendants to maintain and have in reserve a large amount of literary material. The complainants, in the reduction of costs, had all the benefits of the low costs of a multiple picture producer. This loss is a usual and necessary one incident to that business.

3155 5. To the ruling in Paragraph 28 thereof, which disallows as an item of General Studio Overhead the sum of \$922,141.09 as "Compensation paid to Louis B. Mayer Pictures" (Defendants' Exhibit 18-D5).

Rubin, S.M.N.Y. 1111-1138; Mills, S.M.N.Y. 1101-1105; Defendants' Exhibit 33 "through and including page 51" of the printed paper offered (S.M.N.Y. 1115). The portion of the Exhibit, "The agreement of December 15, 1932, which appears on page 52 of Defendants' Exhibit 33," etc., referred to by the Special Master in the middle of page 32 of his report, is not in evidence. Furthermore, December 15, 1932 came after the accounting period which ended on August 31, 1932.

3156 The amount paid the partnership was a necessary expense of the business. It was additional compensation paid Mayer, Thalberg and Rubin for services actually rendered by them, measured by profits. The contract was a continuation of a contract entered into in 1924. Any of the moneys so paid out could not be regarded as profits to the defendants. The partners dealt with the defendants at arms' length, as their total stock interest in Loew's Inc. did not exceed one per cent. (Rubin, 1130). Under

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the authorities this amount should be allowed as a deductible expense of the business. 3157

6. To the ruling in Paragraph 31 thereof, which disallows as an item of General Studio Overhead the sum of \$1,559,559.79 as "Interest paid (per Exhibit 10)" (Defendants' Exhibit 18-D5).

Mills, S.M.N.Y. 191-193; 239-246; 1092-1095; Defendants' Exhibit 10.

At pages 191 and 192, Mills says the loan on which this interest was paid "is always comparable with the total inventory of the pictures." The moneys were invested by the defendant producer "in their pictures and processes, books and rights, pictures completed but not released and in their inventory of pictures which have been released less the amortization written off against them." The maintenance of business as a multiple picture producer required the use of this money as a necessary overhead expense of the business. 3158

7. To the ruling in Paragraph 34 thereof, which disallows the defendants' claim that for the purpose of computing what portion of the General Studio Overhead should be borne by "Letty Lynton," the total amount of such General Studio Overhead should be divided by 36 (approximately), as representing the number of pictures made at the Culver City Studio during the fiscal year 1932, as shown on Defendants' Exhibit C-25, and which instead apportions such General Studio Overhead on the relation which the costs and labor used in the making of "Letty Lynton" bears to the costs and labor used in the making of all pictures made at the said Studio during such fiscal year, and further excepts to the method adopted by the Special Master in arriving at a ratio on the basis stated by using as a numerator purporting to be the costs and labor used in the making of "Letty Lynton" a figure 3159

*Defendants' Exceptions to Special Master's Report.*

3160 eliminating foreign version costs and labor, actually expended or used at the Studio, and by using as a denominator a figure which included not only the costs and labor used in the making of all pictures at the Studio during such fiscal year but also the costs and labor expended and used in the making of all foreign versions, including the "Letty Lynton" foreign versions.

Craig, S.M.C.C. 240-242, 485-509, 545-564, 620-623; Defendants' Exhibits C-25, C-29, C-30, C-31; Mills, S.M.N.Y. 193, 368-370, 504-519, 607-608; Defendants' Exhibit 25; Prager, S.M.N.Y. 1151-1169.

3161 As to shorts, 24 shorts worked on during fiscal year 1932 (Defendants' Exhibit C-24; Craig, S.M.C.C. 485, 486, 496); 8 released during year (Craig, 486). Overhead, direct, of \$7,000. charged on shorts (Craig, S.M.C.C. 486, 624). Executives gave little supervision to shorts (Mayer, S.M.C.C. 394; Craig, S.M.C.C. 487, 488; Rubin, S.M.N.Y. 1137).

8. To the ruling in Paragraph 36 thereof, which disallows as a credit the sum of \$3,630.12 paid to the Motion Picture Producers and Distributors of America, Inc., and to the same ruling in Paragraph 40 thereof, which disallows as a credit the sum of \$76.69 listed on Exhibit 18 as having been paid to the same association.

3162 Mills, S.M.N.Y. 165-175, 1108-1109; Defendants' Exhibits 31 and 32. These amounts cannot be recovered for the reason that services had been rendered by the Motion Picture Producers and Distributors of America, Inc.

9. To the findings and to all changes of figures shown in Paragraphs 35, 37, 38 and 40 based on rulings hereinbefore excepted to.

10. To the ruling in Paragraph 41 thereof, which disallows, or imposes conditions upon the allowance of, the claim of the Pictures Corporation for Federal Income



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Taxes and to the concluding paragraphs of the report. 3163  
under the heading "Income Taxes."

Mills, S.M.N.Y. 375;

Larson v. Wrigley, 277 U. S. 97, 100;

Stromberg Motor Devices Co. v. Zenith-Detroit Co.

(C. C. A. 2, 1934), 73 F. (2d) 62, 65.

11. To the restatement of the first page of Defendants' Exhibit 18 in so far as the same is based on rulings or findings to which exceptions have already been taken herein on behalf of the defendant Pictures Corporation.

## III.

3164

ON BEHALF OF THE DEFENDANT METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION (HEREIN-CALLED DISTRIBUTING CORPORATION), WE RESPECTFULLY EXCEPT TO THOSE PORTIONS OF THE REPORT HAVING TO DO WITH THE ACCOUNTING OF DISTRIBUTING CORPORATION AS FOLLOWS:

1. To the ruling in Paragraphs 8 and 10 thereof, which disallows as the Distributing Corporation's share of the distributing expense, which "Letty Lynton" should be charged with, the sum of \$111,777.26, based on the relation of costs of distribution to gross receipts, and to the ruling in Paragraph 15 thereof, which allows in place thereof only the sum of \$76,657.35, upon the theory that all feature pictures distributed during the fiscal year 1932 should bear an equal share of the total distributing expense of the Distributing Corporation for such year for all pictures, and to the portions of Paragraphs 3-10 thereof which state the reasons for such allowance, and to the findings in Paragraphs 9 and 10 thereof, that during such fiscal year the defendants Pictures Corporation and Distributing Corporation distributed the equivalent of sixty (60) feature pictures, and accordingly excepts to all changes of figures in such accounting based on the rulings herein specified. 3165

*Defendants' Exceptions to Special Master's Report.*

3166 This exception is based upon the same grounds as exception 1 taken in respect of the same rulings of the Special Master in relation to the accounting of the Pictures Corporation.

2. To the ruling in Paragraph 13 thereof, which disallows the sum of \$11,100.00 for "Accounts Receivable Written Off" as an item of general distributing expense.

Mills, S. M. N. Y. 421, 422.

3. To the findings and to all changes of figures shown in Paragraph 15 thereof based on rulings hereinbefore excepted to.

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4. To the ruling in Paragraph 16 thereof, which disallows, or imposes conditions upon the allowance of, the claim of the Distributing Corporation for Federal Income Taxes and to the concluding paragraphs of the report under the heading "Income Taxes".

Mills, S. M. N. Y. 425. See authorities under 11 of subdivision II hereof.

5. To the restatement of the first page of Defendants' Exhibit 19 in so far as the same is based on rulings or findings to which exceptions have already been taken herein on behalf of the defendant Distributing Corporation.

3168

## IV.

ON BEHALF OF THE DEFENDANT LOEW'S INCORPORATED (HEREIN CALLED LOEW'S), WE RESPECTFULLY EXCEPT TO THOSE PORTIONS OF THE REPORT HAVING TO DO WITH WHAT IS REFERRED TO AS THE ACCOUNTING OF LOEW'S, AS FOLLOWS:

1. To the refusal of the Special Master to rule that Loew's fully discharged its liability to account herein by submitting upon the Accounting Defendants' Exhibit L-1.

*Defendants' Exceptions to Special Master's Report.*

whereby it was shown that Loew's received no profits or gains from the exhibition of the film play "Letty Lynton" (its liability to account under such decree being limited to profits or gains from *exhibition only*) and whereby it was shown that all exhibitions of the film play "Letty Lynton" were made by corporations, not parties to this suit, and to the action of the Special Master, over the objections and exceptions stated in the record at various places (including, but without limitation, pp. 626 to 660, S. M. N. Y.), which exceptions are herewith repeated and renewed, in requiring the submission herein of separate accounts on behalf of each corporation which exhibited "Letty Lynton" in which Loew's had a stock interest, regardless of whether such stock interest was in whole of the stock or in only a part, and regardless of whether Loew's owned such stock interest directly or through one or more intermediate corporations and, in the case of the eight theatres listed on Defendants' Exhibit L-12, regardless of the absence of all stock interest; and this exception is hereby renewed and repeated as to each of the corporations whose accounts are set forth on any of the Defendants' Exhibits L-6 to L-13, both inclusive, and as to each and every finding of the Special Master predicated upon said accounts separately or collectively; and to each and every ruling imposing any liability upon Loew's to account to the plaintiffs herein for profits:

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2. To the finding in Paragraph 5 thereof, that the defendant Loew's is accountable to the complainants for the gains and profits accruing to it through the exhibition of "Letty Lynton" by the theatres owned by the corporations listed on Defendants' Exhibit L-1, in which Loew's had only a stock interest, and to the finding therein that Loew's, acting through its so-called managing agency, the Marcus Loew Booking Agency, used these corporations as agents for the exhibition of the pictures produced by the production agency of the Loew's organization.

*Defendants' Exceptions to Special Master's Report.*

3172 (In fact, these corporations all used the Marcus Loew Booking Agency as their agent to render services to each of them for a rate of compensation much less than each corporation would have had to pay if each of them contracted separately for the rendition of the services performed by such Agency (S. M. N. Y. pp. 1070-1075). The Special Master found in Paragraph 8 thereof that the Booking Agency rendered a *valuable service to the theatre*.)

3173 3. To the ruling in Paragraph 14 thereof, in respect of the theatres which exhibited "Letty Lynton" for a period less than a full week, which disallows the claim of Loew's that the weekly overhead for each of such theatres, as shown on Exhibits L-7, L-9, L-11 and L-13, should be apportioned in the ratio of the gross receipts during the period when "Letty Lynton" was exhibited to the gross receipts for the entire week, and which allows the claim of the complainants that such total weekly overhead should be divided by seven and multiplied by the number of days during which "Letty Lynton" was exhibited, and to all findings and to all changes in figures in the accounts submitted by defendants based on the ruling in Paragraph 14 of the report.

Mills, S. M. N. Y. 679, 680, 684-700, 706, 707, 728-730.

3174 The Special Master overlooked the generally accepted principle in the industry that the week is divided into tenths and that to the week-end is ascribable five-tenths, that is, three-tenths for Sunday and two-tenths for Saturday (pages 685, 688) and that to each of the other days of the week is ascribable one-tenth, and that this principle is not limited in its application to profit sharing contracts. The part of the week during which the receipts are at peak (referred to as "preferred playing time") necessarily has to compensate for the intervening period of low receipts. The motion picture "Letty Lynton" was exhibited during "preferred playing time" (page 685), that is, on week-ends, and therefore it should bear a greater percentage of the



*Defendants' Exceptions to Special Master's Report.*

weekly expense than a picture which was exhibited during the week. The defendant Loew's claim is that each dollar of the weekly receipts should bear an equal amount of the weekly overhead, which is more advantageous to the plaintiffs than the division of the week into tenths (pages 690-700).

3175

4. To the ruling in Paragraph 15 thereof, which disallows the claim of Loew's that the net profits of the theatre corporations shown on Defendants' Exhibits L-6, L-8, L-8 $\frac{1}{2}$ , L-10 and the theatres shown on Defendants' Exhibit L-12, should be apportioned on the basis of ascribing one-third thereof to the other attractions which were exhibited at said theatres during the period when "Letty Lynton" was also exhibited, and to the ruling made in favor of the complainants, which makes no apportionment of the net profits but which ascribes all the net profits of such theatres, after allowance only of the actual costs of the other attractions, to the exhibition of the motion picture "Letty Lynton".

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Mills, S. M. N. Y. 664-676, 705, 723-726.

At page 726, complainants' counsel, Mr. Driscoll, said: " \* \* \* We contend as a matter of law the profits made that week cannot be divided or allocated in any manner." The Special Master then said: "I understand that. But assuming that their (defendants' counsel) contention was correct, do you make any point of the division?" To this, Mr. Driscoll replied: "No."

3177

We submit that the case clearly calls either for an apportionment of the profits, or if that be difficult or impossible, an award "in lieu of the actual damages and profits".

5. To the ruling in Paragraph 16-a thereof, which disallows, or imposes conditions upon the allowance of, the claim of Loew's for Federal Income Taxes and to the concluding paragraphs of the report under the heading "Income Taxes".

*Defendants' Exceptions to Special Master's Report.*

3178: The claim for this deduction in respect of the profits of all the theatre corporations was made apart from Defendants' Exhibits L-6, L-8, L-8 $\frac{1}{2}$ , L-10 and L-12. (See S. M. N. Y. 1240.) See also authorities under 11. of subdivision II hereof.

6. To the restatements of the accounts contained in Paragraph 17 thereof in so far as the same is based on rulings to which exceptions have already been taken herein in behalf of the defendant Loew's and the compilations therein contained made to take the place respectively of Defendants' Exhibits L-6, L-8, L-8 $\frac{1}{2}$ , L-10 and L-12.

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## V.

ON BEHALF OF THE DEFENDANT CULVER EXPORT CORPORATION (HEREIN CALLED CULVER), WE RESPECTFULLY EXCEPT TO THOSE PORTIONS OF THE REPORT HAVING TO DO WITH THE ACCOUNTING OF CULVER, INCLUDING THE ACCOUNTS OF THE FOREIGN CORPORATIONS IN WHICH CULVER HAD AN INTEREST AS THAT ONLY OF A STOCKHOLDER, AS FOLLOWS:

3180

1. To the refusal of the Special Master to rule that, except as to film rental income in the sum of \$2,876.10, shown as "Film Rental Income—Direct" on Defendants' Exhibit 20 and received "from the United States Navy, or steamship lines which Culver sold direct instead of through a subsidiary" (S. M. N. Y. p. 452), Culver was not accountable in this suit, all receipts by Culver having been realized from distribution of the picture "Letty Lynton" outside of the territory to which the Copyright Laws of the United States extend and through stock interest in corporations engaged in the distribution of "Letty Lynton" outside of such territory, and to the action of the Special Master in overruling the objections and exceptions taken on behalf of Culver (including, but without limitation, pp. 443 to 447,

*Defendants' Exceptions to Special Master's Report.*

S. M. N. Y.) to the inclusion of any profits and gains by Culver in the accounting in this suit and to each and every finding of the Special Master predicated upon the accounts of the corporations in which Culver had a stock interest, and upon said accounts separately and collectively, and to each and every ruling imposing any liability upon Culver to account to the plaintiffs for gains or profits realized by said corporations. 3181

The Copyright Statutes of the United States have no extra-territorial effect.

*Ferris v. Frohman*, 223 U. S. 424;

*American Code Co. v. Bensinger*, (C. C. A. 2, 1922),

282 Fed. 829, 833. 3182

2. To the ruling in Paragraph 4 thereof, that Culver was simply an agency used for the purpose of handling the foreign business of distribution and exhibition of Loew's, Inc. pictures in any such sense as to justify the finding that Culver has not in all respects a corporate entity distinct from that of the defendant Loew's or from that of the other corporations defendants.

Culver was organized in 1925 to handle the marketing of M-G-M pictures in foreign countries. No fraud or other sinister purpose can be imputed to such organization. Loew, S. M. N. Y. 990-992.

3. To the ruling in Paragraph 5 thereof, that the foreign corporations whose stock was owned by Culver were merely agents used by Culver for the distribution and exhibition of pictures in the various countries in which they were incorporated, and to the Special Master's failure to find that each of said corporations was a separate and distinct entity, and to the failure of the Special Master to rule that the various foreign companies were entitled to retain the full amount payable to them for distribution under their respective contracts with Culver. (Defendants' Exhibit 1 for Identification, S. M. N. Y. 77, 79; Brunet, S. M. N. Y. 3183

*Defendants' Exceptions to Special Master's Report.*

3184 82-105; Defendants' Exhibit 3 for Identification, p. 155; Defendants' Exhibits 5 and 6, pp. 38, 79.

Each of these foreign corporations had its own separate phase of activity, the conditions in one country differing substantially from those in another. Loew, S. M. N. Y. 998. Mr. Blum, secretary of Culver in 1932 and a member of the Bar, was called to testify as to the separate bona fide reasons for organizing each of these foreign corporations, but complainants' counsel, Mr. Driscoll, objected. Blum, S. M. N. Y. 1013-1018. At page 1017, in this connection, the Special Master stated: "I don't think there is any question about that, that they incorporated these corporations because it was the best way they could do business." to which Mr. Driscoll replied: "I do not think there is any question about that—these incorporated in 1927-1928, long before this play was written."

3185 4. To the ruling in Paragraph 6 thereof, that the central control and direction of these foreign corporations, all organized in such foreign countries, all affected by peculiar conditions varying from those of the American market, all having executives familiar with the separate phase of activity of each of such countries (S. M. N. Y., pp. 998, 1018), rested in the executive offices of Culver located at 1540 Broadway, New York City, that is, in the general New York offices of Loew's, in any such sense as to justify the finding as to each or any of said corporations that their gains or profits derived wholly from the distribution or exhibition of the picture "Letty Lynton" outside of the United States are in fact those of the defendant Loew's or the defendant Culver or that the defendant Loew's or the defendant Culver is liable by reason of the alleged tortious acts of such corporations committed outside of the United States.

3186 5. To the ruling in Paragraph 7 thereof, that Culver is accountable herein (otherwise than in respect of the sum of \$2,876.10, as stated in 1 hereof).



*Defendants' Exceptions to Special Master's Report.*

6. To the ruling in Paragraph 15 thereof, which disallows as Culver's share of the distributing expense, which "Letty Lynton" should be charged with, the sum of \$12,536.28 based on the relation of costs of distribution to gross receipts, and which allows in place thereof only the sum of \$9,805.79 upon the theory that all feature pictures distributed abroad by Culver during the fiscal year 1933 should bear an equal share of the total distributing expense of Culver for such year for all pictures, and to the portions of Paragraphs 33-36, both inclusive, which state the reasons for such allowance, and to the finding in Paragraph 35 thereof that during such fiscal year of 1933 the defendant Culver and the foreign corporations of which it was a stockholder distributed the equivalent of forty-five feature pictures, and accordingly excepts to all changes of figures in such accounting based on the ruling in this paragraph specified.

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This exception is based to a large extent upon the same grounds as exception 1 taken in respect of the same rulings of the Special Master in relation both to the accounting of the Pictures Corporation under subdivision II hereof and that of the Distributing Corporation under subdivision III hereof. However, in respect of each of the foreign corporations and of each of the countries where the film play "Letty Lynton" was exhibited, there were great differences in the relation of income to expenses and also in the number of pictures exhibited.

3189

The Special Master's ruling in Paragraph 35 (pp. 79, 80) of his report, that Culver distributed the equivalent of 45 pictures, seems entirely to disregard defendants' counsel's statement (S. M. N. Y. 967, 968) that only 33 pictures on an average were distributed in 1932-1933, and that, in general, no newsreels were distributed abroad. In this connection, Mr. Mills testified that the distribution of the shorts was about in the same reduced proportion as that of the features. If the Master had followed this same pro-

*Defendants' Exceptions to Special Master's Report.*

3190 portion in resolving shorts into features on the basis of 9 reels, the total of shorts equivalent to features to be added to 33 would be 10. Since no newsreels were distributed, 43 would be the highest number of pictures distributed abroad under this method of computation, to which method, of course, the defendants have specifically excepted.

3191 7. To the ruling in Paragraph 16 thereof, which disallows the sum of \$106,582.09 as the production cost to Culver of the picture "Letty Lynton" and allows in place thereof the sum of \$83,967.30, representing 25% of the sum of \$335,869.21 found in Paragraph 35 of that part of the report dealing with the accounting of the Picture Corporation, and herewith repeats and renews all exceptions taken herein to the principles and figures upon which total figure of negative cost is computed; and further excepts to the recommendation of the Special Master that the negative cost or production cost to Culver be increased from 25% to 35.65% of the total production cost in the event that the Court should hold that the complainants are not entitled to recover against Culver.

The agreement that Culver should bear 25% of the negative cost was in existence prior to this litigation (Mills, S. M. N. Y. 370-373, 459; Rubin, S. M. N. Y. 1141, 1142).

3192 8. To the restatement of Exhibit 20-D in Paragraph 19 thereof, in so far as the same is based on rulings to which exceptions have already been taken herein on behalf of the defendant Culver.

9. To the ruling in Paragraph 20 thereof, which disallows, or imposes conditions upon the allowance of, the claim of Culver for Federal Income Taxes and to the concluding paragraphs of the report under the heading "Income Taxes," Mills, S. M. N. Y. 463.

There is no question as to the correctness of the amount of the income tax paid, the claim of the plaintiffs being that

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income taxes are not properly deductible (pp. 73, 74, S. M. 3193  
N. Y.). See also comment under 10, subdivision II hereof.

10. To the restatement of Exhibit 20 in Paragraph 21 thereof, in so far as the same is based on rulings or findings to which exceptions have already been taken herein on behalf of the defendant Culver.

AND WITH RESPECT ONLY TO THE FOREIGN CORPORATIONS IN WHICH CULVER HAD ONLY A STOCK INTEREST:

11. To the ruling in Paragraph 27 thereof, which is the same ruling as in Paragraph 15 thereof, to which exception has already been taken in Paragraph 6 hereof, viz., on the ground that such distributing expenses should be based on the relation of costs of distribution to gross receipts and not upon the theory that all feature pictures distributed abroad by Culver during the fiscal year 1933 should bear an equal share of the total distributing expense for all pictures so distributed, and further excepts to all changes of figures based on such ruling. 3194

This exception is based upon the same grounds as those stated in exception 6 of this subdivision under the Culver accounting. These grounds apply also to the exception taken under 12 immediately following.

12. To the ruling in Paragraphs 33-36 thereof, both inclusive, which disallows as the total foreign corporations' share of the distributing expense, which "Letty Lynton" should be charged with, the sum of \$84,260.05, based on the relation of costs of distribution to gross receipts in the case of each of said corporations, and which allows in place thereof only the sum of \$68,640.54, based upon the theory that all feature pictures distributed abroad by Culver and the foreign corporations during the fiscal year 1933 should bear an equal share of the total distributing expense of Culver and the foreign corporations for such year for 3195

*Defendants' Exceptions to Special Master's Report.*

3196 all pictures, and farther excepts to the portions of such Paragraphs 33-36, both inclusive, which state the reasons for such allowance, and to the finding in Paragraph 35 thereof in which the Special Master finds that during such fiscal year of 1933 the defendant Culver and the foreign corporations of which it was a stockholder distributed the equivalent of forty-five (45) feature pictures, and accordingly excepts to all changes of figures in such accounting based on the rulings in Paragraphs 33-36, both inclusive, of the report.

3197 13. To the ruling in Paragraph 37 thereof, which disallows, or imposes conditions upon the allowance of, the claims for Federal Income Taxes listed on Defendants' Exhibit 21 and to the concluding paragraphs of the report under the heading "Income Taxes."

Mills, S. M. N. Y. 477-479. (See comment 9 above.)

14. To the restatement of the first page of Exhibit 21 in Paragraph 38 thereof, in so far as the same is based on rulings to which exceptions have already been taken herein on behalf of the defendant Culver.

Respectfully submitted,

J. ROBERT RUBIN.

Attorney for Defendants Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation.

LEOPOLD FRIEDMAN.

Attorney for Defendant Loew's, Inc.

SAMUEL D. COHEN.

Attorney for Defendant Culver Export Corporation.



**Defendant Metro-Goldwyn-Mayer Distributing Corporation's Waiver of Exception.**

3199

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[SAME TITLE.]

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The defendant Metro-Goldwyn-Mayer Distributing Corporation hereby waives the exception heretofore filed by it to the disallowance by the Special Master of the sum of \$11,100.00, "Accounts Receivable Written Off," as an item of general distributing expense, contained in the accounting of the defendant Metro-Goldwyn-Mayer Distributing Corporation.

Dated: New York, October 25, 1938.

3200

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*Complainants' Exceptions to Special Master's Report.*

3202

To:

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152 West 42nd Street,  
New York City.

**Complainants' Exceptions to Special Master's Report.**


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[SAME TITLE:]

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3203

The complainants above named hereby except to the report of Special Master Gordon Auchincloss, Esq., filed herein in the office of the Clerk of this Court on the 9th day of May, 1938, in the following respects only:

ITEM 2, PAGES 10-11: To the allowance of \$8,517.48 as distribution expense to Metro-Goldwyn Pictures Corporation. The testimony is that the picture was produced by Metro-Goldwyn-Mayer Corporation. It was distributed by the Metro-Goldwyn-Mayer Distributing Corporation. It was exhibited by Loew's, Inc.

3204

There are three separate and distinct activities—production, distribution and exhibition. Metro-Goldwyn Pictures Corporation was a holding corporation (S.M.N.Y. 200). It took over the negative from the Producing Company and turned it over to the Distributing Company for distribution (S.M.N.Y. 201). Metro-Goldwyn Pictures Corporation served no worthwhile function in the situation, and no item of overhead as a deduction should be allowed.

ITEM 4, PAGES 14-15: To the allowance as a credit \$2000, representing salary of Joan Crawford for idle time between the finishing of a previous picture and her actual starting of the picture LETTY LYNTON, and the item of \$2500 which

*Complainants' Exceptions to Special Master's Report.*

represents the idle time of her co-star Robert Montgomery. It was admitted by defendants' witnesses that if Miss Crawford and Mr. Montgomery had been idle for six months between pictures, their accumulated salary would be charged against the next picture (S.M.C.C. 110-111, 148).

3205

Since the complainants are not in partnership with the defendants, complainants cannot be charged with the idle time of the stars.

ITEM 5, PAGES 15-16: To the allowance of all departmental overhead proposed to be allowed by the Special Master.

The item of \$1,045.17 overhead, Camera Department, should be eliminated. LETTY LYNTON was charged with the services of twenty-four different camera men. There is nothing in the record to prove that LETTY LYNTON added anything whatever to the expense of the Camera Department beyond the services of the men engaged in the actual shooting of the picture.

3206

An item of \$221.57 overhead in the Editors and Cutters Department should be eliminated.

An item of \$896.05 overhead of the Stock Talent Department should be eliminated.

The aforesaid item represents the cost of idle time of stock actors (S.M.C.C. 53, 111-112 and 252-254).

An item of \$3,310.30 representing overhead of Scenario Department should be eliminated.

3207

An item of \$275.71 allowed as overhead in the Lighting Department should be eliminated.

ITEM 7, PAGE 17: To the allowance of \$4,206.10 for Publicity Salaries. The method pursued by the defendants in allocating this charge is unwarranted and unreasonable.

The allowance of \$610.76 as overhead in cost of Musicians Department, not specifically mentioned in report.

ITEM 8, PAGE 18: To the allowance of the item of \$3,704.65 designated as Construction Supervision which in

*Complainants' Exceptions to Special Master's Report.*

3208 reality represents departmental overhead of the Construction, Property and Art Departments. The entire item should be eliminated.

ITEM 9, PAGES 18-20: To the allowance of general studio overhead. Specifically except to any allowance for items making up general studio overhead not specifically set forth in the report.

ITEM 10, PAGES 20-21: To the allowance of the items of \$1,047,599.43 and \$16,482.79 as part of Studio-Overhead, which items are made up of the salaries of executives, assistants, secretaries and stenographers and expenses of the Executive Department.

3209 ITEM 11, PAGES 21-22: To the allowance of \$2,745, designated as "Salaries Maintenance". This item represents unassigned salaries of doctors and nurses (S.M.C.C. 210-212). These doctors and nurses were not assigned to any production. The item in question is their compensation for idle time, when not assigned to any production.

ITEM 12, PAGE 22: To the allowance of \$2,060.52 alleged to represent legal and other expenses re patent rights, and \$30,573.43 alleged to represent legal salaries and expenses. These items have nothing to do with LETTY LYNTON.

3210 ITEM 14, PAGE 22: To the allowance of insurance general—\$33,635.91; insurance miscellaneous compensation—\$54,051.30, and taxes, city, county and state—\$72,461.50. The record does not show that LETTY LYNTON in any way affected the insurance situation.

ITEM 15, PAGE 23: To the allowance of:

Losses not covered by insurance—	\$496.65
Entertainments—	8,440.23
Donations—	6,928.99

An infringer cannot reduce his profits on one job by his losses on another.

Entertainment and gratuities cannot be charged to LETTY LYNTON.



*Complainants' Exceptions to Special Master's Report.*

ITEM 16, PAGE 23: To the allowance of Salaries of Directors Unassigned—\$27,715.49. This item is in the same category as compensation paid to stars, directors and others during idle time (S.M.C.C. 223, 225). 3211

ITEM 17, PAGE 23: To the allowance of Miscellaneous Unclassified Expense—\$19,357.06. This item is made up of a number of smaller items (S.M.C.C. 226-229). All the parts of this item should have been direct charges against other production.

ITEM 18, PAGES 23-24: To the allowance of Rejected Continuity Charges and Songs—\$63,996.57, and Rejected Pictures—\$151,686.80. The evidence is that the items referred to exactly what their titles indicate, that they represented payments made for rejected charges, continuities, songs and rejected pictures and had nothing to do with LETTY LYNTON. Losses cannot be deducted from profits. 3212

ITEM 20, PAGES 24 AND 25: To the allowance of Home Office Unclassified—\$46,081.93. The item in question represents the cost of making tests in the New York office of various people being considered as screen possibilities, and none of them appeared in LETTY LYNTON (S.M.C.C. 232).

ITEM 21, PAGE 25: To the allowance of \$24,678.10 for Experimental Work—Trick Cameras. The testimony was that the item represented exactly what its title indicated. It is experimental work that is continually going on from year to year (S. M. C. C. 232). 3213

ITEM 22, PAGE 25: To the allowance of \$298,025.47 representing Salaries of Unused or Idle Artists not assigned to any particular picture. Under that the testimony is that LETTY LYNTON was charged directly with wages and compensation of all persons directly involved in the making of the picture, and that the item in question represented entirely unassigned salaries of unused or idle artists (S.M.C.C. 234, 237).

ITEM 23, PAGE 25: To the allowance of all debit items of overhead of the various departments of the company not

*Complainants' Exceptions to Special Master's Report.*

14 absorbed specifically into particular pictures. The above includes Construction Department—\$5,211.73. The Construction Department overhead is broken down in Exhibit C-9. It includes an item for unassigned salaries of \$3,692.34, which if eliminated would reduce this item to \$1,519.30. It also includes Publicity—\$101.53. In the direct charges we have suggested a charge against LETTY LYNTON for publicity on the basis of labor and material. Similar charges made against all other pictures would entirely eliminate any item of overhead.

Editorial Department—\$11,841.67. This item should be reduced to \$4,576.98 (See Exhibit C-2). The following items that go to make up the overhead of the Editorial Department should be eliminated:

Cataloguing test library—	\$1,738.84
Unassigned salaries—	5,525.85

To catalogue the test library is valuable for future productions, but LETTY LYNTON ceased to have any interest in the test library after the month of February, 1932, when shooting was completed.

Property Department—\$7,708.62 should be reduced to \$5,855.30. The breakdown of the overhead of the Property Department is shown in Exhibit C-11.

The item of Unassigned Salaries—\$1,873.33 should be eliminated.

16 Music Department—\$21,330.20, should be changed to a credit of \$82,183.16. The breakdown of the overhead of the Music Department appears in Exhibit C-7. This exhibit demonstrates the injustice of charging to LETTY LYNTON any part of unassigned salaries. During the fiscal year in question the defendants had on their payrolls a number of music writers who were not assigned to any production. An item of unassigned salaries appears in the aforesaid overhead of \$81,725.82, which should be eliminated. There is also the item of library expense—\$17,860.99, which was

*Complainants' Exceptions to Special Master's Report*

valuable to defendants for future productions but added no value to LETTY LYNTON. 3217

There is an item of music purchases—\$516.08, which had nothing to do with LETTY LYNTON, and an item of unallocated music—\$3,410.47, which had nothing to do with LETTY LYNTON.

Eliminating those four items from the overhead, the unabsorbed item becomes an overabsorbed item, and changes from the debtor to the creditor side.

Camera Department—\$9,781.52 Appearing as a charge should be changed to a credit of \$1,638.07. The overhead of the Camera Department is broken down in Exhibit C-1. The following items therein should be eliminated: 3218

Unassigned salaries of first cameraman	\$6,162.16
Unassigned salaries of second cameraman	431.78
Unassigned salaries of assistant cameraman	132.77
Unassigned salaries of still cameraman	14.16

In addition to the foregoing there is an item of miscellaneous expenses—\$4,678.72. It is admitted that LETTY LYNTON was in no way involved in this item (S.M.C.C. 99-100).

Precision Machine Shop—\$141.03. Should be changed to a credit of \$80.75. The overhead of the Precision Machine Shop is shown on Exhibit C-17.

If unassigned salaries of \$221.78 are eliminated, the charge becomes a credit. 3219

Mechanical Department—\$9,379.54. This item should be reduced to \$8,196.26. The details of the overhead appear in Exhibit C-5.

Eliminating unassigned salaries would reduce the item \$1,183.28.

Art Department—\$15,204.64. Should be reduced to \$11,501.78. The details appear in Exhibit C-8. The reduction is to be accounted for by eliminating unassigned salaries of \$3,702.86.

*Complainants' Exceptions to Special Master's Report.*

220 Miniature and Trick Department—\$12,280.69. The details of this item appear in Exhibit C-19. The reduction is accounted for by eliminating unassigned salaries of \$2,792.49.

Newcombe Department—\$1,307.77. Should be changed to a credit of \$2,716.48. The details appear in Exhibit C-20. Eliminating unassigned salaries of \$4,024.25, the charge will become a credit.

Foreign Department Overhead (unabsorbed)—\$17,173.36. Should be changed to a credit of \$7,064.02. The details appear in Exhibit C-11.

The following items should be eliminated:

221	Talent tests	\$175.94
	Experiment on foreign pictures	4,983.82
	Unassigned salaries	13,614.39
	Trans-foreign employees	5,463.23

None of the said items have anything to do with LETTY LYNTON.

ITEM 24, PAGES 25 AND 26: To the allowance of Over-absorbed Balance-Sound Overhead in the amount of \$113,249.85 only.

222 The details of the Sound Department overhead is shown in Exhibit C-12, pages 1 and 2. In that item of overhead there is a charge for "Unassigned Time of Mixers; Stage Men and Recording—\$4,337.39", and a charge of "Vacations Only—\$10,486.61". These two items are in the same category as unassigned salaries appearing elsewhere throughout the account. It is idle time that cannot be charged against LETTY LYNTON. The elimination of these two items would increase the overabsorption to \$128,073.85.

To the allowance of "Auto and Trucking—\$14,287.16" only. The overhead of the Automotive Department is broken down in Schedule C-14. It includes an item of unassigned salaries of \$830.32. If that item were eliminated it would increase the credit to \$15,117.48.



.. *Complainants' Exceptions to Special Master's Report.*

To the allowance of "Still Room—\$20,573.48" only. The 3223  
overhead of the Still Department is broken down in Exhibit  
C-16. It includes unassigned salaries of \$1,015.23. This  
item if eliminated would increase the credit to \$21,588.71.

To the allowance of "Scenario Department—\$30,532.41"  
only. The Scenario Department overhead is broken down  
in Exhibit C-3. This exhibit, however, is not very accurate.

There was paid directly to writers and charged against  
specific pictures—\$1,759,669.56. There is then charged  
against each picture 12% of the direct compensation as  
*departmental overhead.*

The following items charged against the overhead of  
the Department should be eliminated:

Books and music purchased	\$4,741.50
Salaries of readers	33,041.29
Unassigned salaries—Scenario Dept.	69,194.96
Unassigned script salaries	12,149.99
Script expense, original stories	305.85

3224

All of the aforesaid items have nothing whatever to do  
with LETTY LYNTON. The compensation of all people who  
worked on LETTY LYNTON, including writers, readers and  
others, was charged directly to LETTY LYNTON (S.M.C.C.  
113-134). The elimination of the above items increases the  
credit from \$30,532.41 to \$149,966.

ITEM 30, PAGE 11: To the allowance of an item entitled 3225  
"Other Production Executives" aggregating \$26,000.

The payments in question were broken down on a state-  
ment that was admitted into evidence as Exhibit 13, and  
showed payments on November 10, 1932 by four checks of  
consecutive serial numbers to Edward Mannix in the sum  
of \$5000; Bernard Hyman in the sum of \$6000; Hunt  
Stromberg in the sum of \$7000, and Charles McArthur in  
the sum of \$8,000; a total of \$26,000.

The fact that the four checks were made on the same  
day and were consecutively numbered would indicate that

*Complainants' Exceptions to Special Master's Report.*

they were all part of one transaction, but the facts were never revealed in the record. At S.M.N.Y. 183 the explanation given was "those were payments to four individuals employed at the Coast, these amounts being paid from New York in addition to any amounts that they received at the Coast". At S.M.N.Y. 229 Mills admitted that he did not know of anything the individuals had to do with the making of LETTY LYNTON.

ITEM 31, PAGES 34-36: To the allowance of an item of \$9000 as six months' interest on the cost of LETTY LYNTON allowed as a direct cost of the production. There is no evidence in the record to support the conclusion that LETTY LYNTON involved the outlay of \$300,000 direct cost for a period of six months. Neither does the item allow for a similar credit of interest upon moneys collected by the defendants on contracts for the exhibition of LETTY LYNTON.

ITEM 32, PAGES 36-38: To the allowance of depreciation either as respects equipment or buildings at Los Angeles Studio or elsewhere and to the method of charging depreciation employed by the Special Master, in that depreciation should be charged on the basis of value rather than cost.

To the allowance of any interest on investment cost and other method employed by the Special Master in arriving at the figure upon which such interest is to be charged, namely, cost rather than value of facilities in use at the time of the making of said picture.

ITEM 33, PAGE 38: Except that complainants claim to be entitled to further allowances as hereinabove indicated, complainants do not object to the reduction of general studio overhead from \$5,891,374.57 to \$3,847,470.54.

ITEM 35, PAGE 42: To the amount of overhead chargeable to LETTY LYNTON found by the Special Master to be \$69,294.36.

The aforesaid objection is based upon the allowance of overhead by the Special Master with which we do not agree, and not to the apportionment of .018 to LETTY LYNTON.

*Complainants' Exceptions to Special Master's Report.*

ITEMS 37 AND 38, PAGE 43: To the total production cost of LETTY LYNTON at \$317,075.89. 3229

ITEM 40, PAGE 43: To the net income from LETTY LYNTON fixed at \$268,861.14. The allowance of other items as hereinabove indicated will increase this net income proportionately.

ITEM 42, PAGE 44: The allowance of further items as hereinabove indicated will affect the following figures given in the restatement of Exhibit 18 by the Special Master:

2-8	Distribution expense	\$8,534.15	
2-38	Production Cost	317,105.81	
	Net income (excluding Canada)	256,003.11	
40	Net income from LETTY LYNTON	268,861.14	3230

**METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION:**

Complainants also except to:

ITEM 12, PAGE 50: The allowance of Home Office Expense as listed on Defendants' Exhibit 19-B. Complainants except to the allowance of any part of this home office expense. There is nothing in the record to show that one dollar of expense was added to the home office budget because of LETTY LYNTON. There is nothing to show that a single employee of the home office was there because of the distribution of LETTY LYNTON. Mr. Mills well pointed out that the real expense of distribution is in the field (S. M. N. Y. 528).

3231

The allowance of depreciation as set forth in Exhibit 19-A. Said item of depreciation is broken down in Schedule 19-D. The item is objectionable on two grounds, first, there is no authority for defendants charging depreciation against LETTY LYNTON; there is nothing to show that LETTY LYNTON in any way caused any part of that depreciation, or that the depreciation would not have been just as great had not LETTY LYNTON been distributed. Second, if depreciation is to be charged on LETTY LYNTON; it can only be

*Complainants' Exceptions to Special Master's Report.*

3232 charged upon the value of the property at the time that LETTY LYNTON was distributed. The charge made by the defendants is arrived at on a cost basis. It may be that in the preceding years the property in question was purchased at figures out of all proportion to its values in 1932. There is no connection between cost and the value as of 1932.

ITEM 14, PAGE 50: The allowance of "Interest on Investment in Branch Office Equipment" amounting to \$20,375.62. The same objections may be made to this item as were made above to the item of depreciation. If defendants were entitled to any interest on investment, which complainants strenuously object to, it would be on the present value of the properties involved and not on some investment that may have been made years before. The complainants and defendants are not in partnership.

3233 ITEM 15, PAGE 50: Because of the above objections to Items 12 and 14, we except to the allowance of \$85,341.50 as distribution cost, and the allowance of \$76,807.35 to the Distributing Corporation and the net income from LETTY LYNTON before taxes paid of \$68,603.42.

ITEM 17, PAGE 51: The allowance of \$76,807.35 for distribution expense for reasons stated supra.

LOEW'S, INC.

3234 Complainants also except to:

ITEM 12, PAGE 57: The allowance of any overhead on theatres during the time the picture LETTY LYNTON was exhibited, on the ground that the exhibition of the picture LETTY LYNTON in no wise contributed to such overhead, and there is no proof that such overhead would not have been incurred in any event despite the exhibition or non-exhibition of said picture.

ITEM 13, PAGES 57-58: The inclusion of proceeds derived from and the expenses incurred in real estate operations alleged to be incidental to the theatre operations on the



*Complainants' Exceptions to Special Master's Report.*

ground that the complainant. e not in partnership with the defendants; that the proper method of calculation on theatre operations is to segregate the theatre operation from all outside operations and to allocate for theatre overhead a ratio of 21% of the gross receipts; that the method adopted by the Master does not provide a fair basis for the treatment of operations apart from theatre operations in that the sampling submitted by defendants' witness Vogel is confined to theatres constructed by Loew's, Inc., and which sampling is confined to but 20% approximately of the theatres in which this defendant is involved, and such ratio is not adequate to provide a fair basis for determination. 3235

ITEM 16, PAGE 62: The allowance to the defendants of any losses on the ground that complainants are not in partnership with the defendants. 3236

## CULVER ACCOUNTING.

Complainants also except to:

ITEM 15, PAGES 71-72: The allowance of \$9,805.79 for distribution expense on the ground that there is no proof that this defendant served any useful purpose in creating any profit. The profit was created as a result of the work done by foreign subsidiaries. There was therefore no justification for a charge of distribution expense by this defendant. The ratio adopted by the Master in allocating to the picture LETTY LYNTON 1/45th of the total distribution expense is erroneous, and if any allocation is to be made it should be on the same ratio as employed in the domestic distribution, to wit, 1/60th rather than 1/45th. 3237

ITEM 16, PAGES 72 AND 73: The proposed allowance of \$82,980.89 as cost of production, in that such cost is predicated upon and includes items previously objected to in arriving at the cost of production in the account of Metro-Goldwyn Pictures Corporation.

*Complainants' Exceptions to Special Master's Report.*

3238 ITEM 19, PAGES 73 AND 74: Such items and figures in this subdivision of the report as would be changed if the objections hereinabove made were complied with.

ITEM 21, PAGES 74 AND 75: Such items and figures in this subdivision of the report as would be changed if the objections hereinabove made were complied with.

ITEM 28, PAGE 77: The disallowance of the specific objections made by the complainants in regard to the expenses of foreign distribution. Specifically we object to the allowance of an item of \$20,714.13, accounts written off. Complainants contend that they should not be charged with losses because of accounts receivable written off, and by the same token they admit that they should not be credited with recoveries on accounts receivable previously written off but later collected. Specifically we except to the following items going to make up expense of foreign distribution:

3239

New York overhead	\$178,538.33
Depreciation	137,810.39
Loss on outside producers' pictures	11,551.86
	<hr/>
	\$327,900.58

Specifically, we object to any depreciation on branch office equipment among other reasons because the basis used is not actual value, but depreciated cost.

3240

ITEM 29, PAGE 78: The allowance of "New York Overhead" as expense of foreign distribution.

ITEM 30, PAGE 78: The allowance of "Depreciation Account" as expense of foreign distribution.

ITEM 31, PAGE 78: The overruling of other objections made by complainants.

ITEM 32, PAGE 78: The finding of total distribution expense to be \$3,046,026.96, and complainants submit that it should be \$2,738,840.51.

*Complainants' Exceptions to Special Master's Report.*

ITEM 34, PAGE 79: The finding of total distributing expense to be \$3,046,026.96, and the total distributing expense as stated in Exhibit 20-A of Culver to be \$484,058.15, and the total distributing expense of Culver and its foreign subsidiaries to be \$3,530,085.11. 3241

ITEM 35, PAGES 79-80: The adoption of 45 pictures as basis of dividing distribution expense. Complainants submit that the figure ought to be 60. Defendants admit that 41 feature pictures were released during the fiscal year, and two were reissued (S. M. N. Y. 963), making a total of 43 feature pictures. Defendants also distributed 84 shorts and 104 newsreels (S. M. N. Y. 964-5). Eliminating the newsreels which were not distributed abroad, and reducing 84 shorts to the equivalent of feature pictures, it is fair to assume that the shorts were equivalent to 91½ features. This, added to the 43 feature pictures handled, makes a total of 52. This does not take into account pictures produced abroad and released through the foreign exchanges. As the Special Master well points out, the complainants were willing to adopt a basis of 60 for domestic distribution, although they were justified in claiming 68. Complainants submit that the same basis of 60 ought to be adopted in estimating the cost of foreign distribution. Admittedly, the burden was upon the defendants to prove the actual number of pictures distributed. It is only fair to assume that that number would at least exceed the equivalent of 60 feature pictures. The change of the basis of division of expense would further change the resulting figure of \$78,446.33. 3242

ITEM 36, PAGE 80: The figures appearing in this item that would be changed if consideration were given to the objections hereinabove contained. 3243

ITEM 38, PAGES 80-81: The figures appearing in this item that would be changed if effect were given to the objections hereinabove contained.

*Complainants' Exceptions to Special Master's Report.*

3244

**INCOME TAXES.**

Complainants also except to:

3245

PAGES 82-87: The allowance of any deductions because of income taxes or the deposit of any part of the profits ascertained in escrow or otherwise. The Special Master has expressly found that the defendants failed to prove "taxable profits" for which they did actually pay income taxes on LETTY LYNTON. Defendants have failed to produce and submit for examination income tax returns showing the income taxes actually paid. Defendants have therefore failed entirely to meet the burden placed upon them of establishing deductions.

The Special Master can take judicial notice of the fact that corporate income taxes for the year in which said profits were received were less than they are for the present year. Damages paid on infringements are deductible as losses in the year when the amount of damages determined by the Master is confirmed by the court.

Dated, New York, May 17, 1938.

Respectfully submitted,

**O'BRIEN, DRISCOLL & RAFTERY,**  
Attorneys for Complainants.

3246

**ARTHUR F. DRISCOLL**  
**EDWARD J. CLARKE**  
Of Counsel.

To:

**J. ROBERT RUBIN, Esq.,**  
Attorney for Defendant  
**Metro-Goldwyn Pictures Corporation, et al.**

**LEOPOLD FRIEDMAN, Esq.,**  
Attorney for Loew's, Inc.

**SAMUEL D. COHEN, Esq.,**  
Attorney for Culver Export Corporation.



## Complainants' Waiver of Exceptions.

3247

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[SAME TITLE.]

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Complainants herein, by their attorneys, O'Brien, Driscoll & Raftery, hereby waive the following exceptions filed on behalf of the complainants to the report of the Special Master.

This waiver is solely for the purpose of this proceeding to confirm the present report of the Special Master, and is confined strictly to the items involved therein, without intending on the part of the complainants otherwise to admit that the respective deductions from gross receipts were proper or in accordance with precedent decisions or statutory law. 3248

Exception to item 2, pages 10-11.

Exception to item 5, pages 15-16, except that the waiver shall not apply to the item of \$896.05 overhead of the Stock Talent Department, representing the cost of idle time of stock actors.

Exception to item 7, page 17.

Exception to item 8, page 18.

Exception to Item 12, page 22.

Exception to item 14, page 22.

Exception to item 15, page 23.

Exception to item 17, page 23.

Exception to item 20, pages 24-25.

Exception to item 21, page 25.

Exception to item 23, page 25.

Exception to item 24, pages 25-26.

Exception to item 30, page 34.

Exception to item 31, pages 34-36.

3249

METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION:

Exception to item 14, page 50.

*Complainants' Waiver of Exceptions.*

3250

LOEW'S, INC.:

Exception to item 13, pages 57-58.

## CULVER ACCOUNTING:

Exception to item 15, pages 71-72.

Exception to item 16, pages 72-73.

Exception to item 19, pages 73-74.

Exception to item 21, pages 74-75.

Exception to item 31, page 78.

Exception to item 35, pages 79-80.

Dated: New York, October 6, 1938.

3251

## O'BRIEN, DRISCOLL &amp; RAFTERY,

Attorneys for Complainants,

Office &amp; P. O. Address,

152 West 42nd Street,

New York, N. Y.,

ARTHUR F. DRISCOLL.

To:

J. ROBERT RUBIN, Esq.,

Attorney for Respondents Metro-Goldwyn Pictures  
Corporation and Metro-Goldwyn-Mayer Dis-  
tributing Corporation,

1540 Broadway,

New York, N. Y.

3252

LEOPOLD FRIEDMAN, Esq.,

Attorney for Respondent, Loew's, Inc.,

1540 Broadway,

New York, N. Y.

SAMUEL D. COHEN, Esq.,

Attorney for Respondent, Culver Export Corporation,

1540 Broadway,

New York, N. Y.

**Complainants' Additional Waiver of Exception.**


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[SAME TITLE.]

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3253

Complainants hereby waive the following exception, filed on behalf of the complainants, to the report of the Special Master.

This waiver is solely for the purpose of this proceeding to confirm the present report of the Special Master, without intending on the part of the complainants otherwise to admit that the item in question is proper or in accordance with precedent, decisions or statutory law.

Exception to Item 28, Page 77, in so far as the said exception refers to an item of \$20,714.13 stated as "accounts written off". 3254

Dated: New York, October 11, 1938.

**O'BRIEN, DRISCOLL & RAFTERY,**

Attorneys for Complainants,

Office & P. O. Address,

152 West 42nd Street,

New York, N. Y.,

Arthur F. Driscoll.

To:

**J. ROBERT RUBIN, Esq.,**

Attorney for Respondents Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation,

1540 Broadway,

New York, N. Y. 3255

**LEOPOLD FRIEDMAN, Esq.,**

Attorney for Respondent, Loew's, Inc.,

1540 Broadway,

New York, N. Y.

**SAMUEL D. COHEN, Esq.,**

Attorney for Respondent, Culver Export Corporation,

1540 Broadway,

New York, N. Y.

256 **Notice of Motion to Confirm Special Master's  
Report, etc.**

[SAME TITLE.]

Sirs:

257 PLEASE TAKE NOTICE that upon the interlocutory judgment heretofore entered herein, and upon the report of the Special Master, Gordon Auchincloss, filed in the office of the Clerk of this Court on the 9th day of May, 1938, and exceptions thereto filed in said office by the complainants on the 25th day of May, 1938, and exceptions thereto filed by the defendants in the said office on the 31st day of May, 1938, and upon all proceedings heretofore had herein, and upon the affidavit of Arthur F. Driscoll, sworn to the 31st day of May, 1938, and the affidavit of Milton M. Rosenbloom, sworn to the 31st day of May, 1938, we shall move this court at a term thereof held for the hearing of motions in and for the Southern District of New York at the Federal Court House, Foley Square, Borough of Manhattan, City of New York, in Room 506 on the 7th day of June, 1938, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order:

- 258
1. Sustaining the exceptions filed by the complainants herein to the said report of the Special Master.
  2. Overruling the exceptions filed by the defendants herein to the said report of the Special Master.
  3. Confirming the said report as modified in accordance with the exceptions filed by the complainants herein.
  4. Directing final judgment in favor of complainants and against the defendants, in accordance with the aforesaid report of the Special Master as modified by this court.



*Notice of Motion to Confirm Special Master's Report, etc.*

5. Fixing the compensation to be paid to the Special Master for the services rendered herein, and directing that the defendants shall pay the same. 3259

6. Fixing a reasonable counsel fee to be allowed to the complainants for services rendered by the attorneys for the complainants in this matter in this court, and directing that the same shall be paid by the defendants.

7. Fixing a reasonable counsel fee to be allowed to the complainants for services rendered by the attorneys for the complainants in this matter in the Circuit Court of Appeals, and directing that the same shall be paid by the defendants. 3260

8. Directing that the complainants shall be entitled to tax their costs and disbursements, and shall have judgment therefor against the defendants.

9. Granting to complainants such other and further relief as to the court may seem just and proper.

Dated: New York, May 31, 1938.

Yours, etc.,

O'BRIEN, DRISCOLL & RAFTERY,

Attorneys for Complainants,

Office & P. O. Address,

152 West 42nd Street,

Borough of Manhattan,

City of New York.

3261

To:

J. ROBERT RUBIN, Esq.,

Attorney for Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation.

LEOPOLD FRIEDMAN, Esq.,

Attorney for Loew's, Inc.

SAMUEL D. COHEN, Esq.,

Attorney for Culver Export Corporation.

**Affidavit of Milton M. Rosenbloom, Read in  
Support of Motion.**

[SAME TITLE.]

State of New York,  
County of New York—ss.:

MILTON M. ROSENBLOOM, being duly sworn, says:

I am an attorney at law, associated with the firm of O'Brien, Driscoll & Raftery, attorneys for the complainants in this action. I am managing clerk in the offices of said attorneys, and I am personally familiar with the proceedings in this matter.

This is an action begun by the complainants above named, Edward Sheldon and Margaret Ayer Barnes, the authors of a play known as DISHONORED LADY, and the owners of the copyright thereon, against the defendants, asking for an injunction and accounting of profits upon a certain motion picture known as LETTY LYNTON, which complainants alleged infringed upon their copyright upon the play DISHONORED LADY.

The action was begun on the 24th of June, 1932, and was tried before Judge Woolsey on April 22nd and 23rd, 1933.

Judge Woolsey dismissed the complaint.

An appeal was taken to the Circuit Court of Appeals, and the judgment entered upon the dismissal by Judge Woolsey was reversed on or about the 17th of January, 1936.

The Circuit Court of Appeals directed that complainants should recover from defendants all profits made upon the picture LETTY LYNTON, and that an accounting should be had, and that complainants should also recover a reasonable attorney's fee in the District Court and in the Circuit Court of Appeals.

*Affidavit of Milton M. Rosenbloom.*

The defendants then attempted to take the matter to the United States Supreme Court and petitioned for a writ of certiorari, which in due course was denied. 3265

The matter then came back to the District Court, and a decree was made by Hon. John C. Knox dated the 29th day of July, 1936, appointing Gordon Auchincloss as Special Master to take and state the account and to report to the Court.

Hearings were thereafter had before the said Special Master, and were concluded on or about March 16, 1938.

On or about the 9th day of May, 1938, Special Master Auchincloss filed his report.

On or about the 25th day of May, 1938, complainants filed exceptions to the said report. 3266

On or about the 31st day of May, 1938, defendants filed exceptions to the said report.

The complainants now move this court for the following relief:

1. Sustaining the exceptions filed by the complainants herein to the said report of the Special Master.

2. Overruling the exceptions filed by the defendants herein to the said report of the Special Master.

3. Confirming the said report as modified in accordance with the exceptions filed by the complainants herein. 3267

4. Directing final judgment in favor of complainants and against defendants in accordance with the aforesaid report of the Special Master as modified by this court.

5. Fixing the compensation to be paid to the Special Master for the services rendered herein, and directing that the defendants shall pay the same.

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*Affidavit of Milton M. Rosenbloom.*

3268

6. Fixing a reasonable counsel fee to be allowed to the complainants for services rendered by the attorneys for the complainants in this matter in this court, and directing that the same shall be paid by the defendants.

7. Fixing a reasonable counsel fee to be allowed to the complainants for services rendered by the attorneys for the complainants in this matter in the Circuit Court of Appeals, and directing that the same shall be paid by the defendants.

3269

8. Directing that the complainants shall be entitled to tax their costs and disbursements, and shall have judgment therefor against the defendants.

9. Granting to complainants such other and further relief as to the court may seem just and proper.

MILTON M. ROSENBLOOM.

Sworn to before me this  
31st day of May, 1938.

LILLIAN E. McMAHON,  
Notary Public.

Queens Co. Clk's No. 1224, Reg. No. 5108.

3270

N. Y. Co. Clk's No. 181, Reg. No. 9Mc46.

Commission Expires March 30, 1939.

**Affidavit of Arthur F. Driscoll, Read in Support of Motion.**

3271

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**[SAME TITLE.]**

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State of New York,  
County of New York—ss.:

ARTHUR F. DRISCOLL, being duly sworn, says: I am an attorney at law, a member of the firm of O'Brien, Driscoll & Raftery, attorneys for the complainants in this action. I am personally familiar with this case from its inception, and have been in personal charge for most of the time. 3272

This affidavit is made in support of a motion to confirm the report of the Special Master filed in this court on the 9th day of May, 1938; to fix the allowances to be made to the complainants as counsel fees in this court and in the Circuit Court of Appeals; to fix the allowance to the Special Master for services rendered; to direct the entry of final judgment in favor of the complainants and against the defendants, and for such other and further relief as to the court may seem just and proper.

The Circuit Court of Appeals in its opinion in this case rendered on January 17, 1936, stated: 3273

“The plaintiffs will be awarded an attorney's fee in this court and in the court below, both to be fixed by the District Court upon the final decree.”

This proceeding was begun by the filing of a bill in equity on or about the 24th day of June, 1932, and the services rendered by deponent and his associates for which allowances are asked, cover a period of six years.

At the time that the bill in equity was filed, deponent's

*Affidavit of Arthur F. Driscoll.*

3274 firm, was composed of Dennis F. O'Brien, M. L. Malevinsky and deponent, and the said firm was practicing under the name of O'Brien, Malevinsky & Driscoll. Mr. Malevinsky, since deceased, had charge of the proceeding. Mr. Malevinsky continued in charge until his death, which took place four months later, that is, on October 17, 1932. At that time deponent took charge and has been in full and complete charge of the matter since then.

Upon the death of Mr. Malevinsky, Edward C. Raftery became a partner with Mr. O'Brien and deponent, and the firm's name was changed to O'Brien, Driscoll & Raftery, and has continued as such at all times since. The new firm succeeded to all the rights of the old firm.

3275 It is difficult if not impossible, to completely detail the enormous amount of services rendered in the prosecution of this claim.

I am attaching hereto a transcript from service cards maintained in our offices, which show the services from day to day, but not completely. The method of keeping these service cards is that a stenographer or secretary will have the attorneys dictate the work performed by the attorney during the previous day or several days. Those services are then transcribed on to the service cards as charges against the different clients. It is of course true that in such a process many services that are rendered are not recorded and cannot be detailed, but in the main the said exhibit contains an outline of the services rendered in this matter.

3276 Prior to the filing of the bill of complaint in this matter, services were rendered in consultation with clients, a study of the various documents involved, the reading of the play which constituted the copyrighted work, and an inspection of defendants' infringing motion picture, the securing of scenarios of the said picture and a study thereof, reading of the novel entitled LETTY LYXTON, the preparation of the bill of complaint and other papers, and other services.

*Affidavit of Arthur F. Driscoll.*

that it is impossible now to detail, constituting many hours of work. Defendants appeared in this action through Nathan Burkan and J. Robert Rubin as attorneys.

3277

Interrogatories were prepared and filed, and an application for a preliminary injunction was made. The application for the preliminary injunction was argued before Judge Goddard on the 19th day of July, 1932. Briefs were prepared and submitted, and eventually the said application for a preliminary injunction was denied, but the case was given a preferential position for trial. The various defendants answered, various motions and proceedings were had as to interrogatories, discovery and the like; motion for bill of particulars was argued, and the other usual preliminary motions were gone through. These various preliminary matters involved several months, and the case was eventually tried before Judge Woolsey on April 22 and 23, 1933. April 22nd was Saturday. Judge Woolsey at the time was engaged in the trial of a long criminal proceeding, and therefore volunteered to try this case beginning Saturday morning at the Bar Association. The case was tried all day Saturday, and was then adjourned to Sunday morning, April 23rd. On Sunday morning court resumed and the trial was completed. Upon the trial defendants were represented by Nathan Burkan as trial counsel and he in turn was assisted by J. Robert Rubin, Louis D. Frohlich and David O. Decker. All parties were given time to prepare and file briefs. The briefs were prepared, printed and filed. Defendants' brief, supplemental brief and reply brief included the following counsels' signatures: Nathan Burkan, J. Robert Rubin, Louis D. Frohlich, David O. Decker and Samuel D. Cohen.

3278

3279

The court set the matter down for argument at his summer home in Petersham, Mass. on the 14th day of July, 1933. All parties appeared at Petersham, and the argument continued all day of July 14th and the next day, July 15th.



*Affidavit of Arthur F. Driscoll.*

3280

One year thereafter, August 1, 1934, the decision appeared in the Law Journal. Judge Woolsey dismissed the complaint with opinion.

3281

Deponent and his associates prepared immediately for an appeal to the Circuit Court of Appeals. Petition and order allowing an appeal were prepared, assignment of errors was prepared and filed, an undertaking was secured, approved and filed, and the appeal otherwise perfected. The record of the trial was procured, the case on appeal prepared and served upon the other side. After various amendments and other delays the original record on appeal was submitted to the Clerk of this Court on the 9th of July, 1935, and the completed record was filed on the 19th day of August, 1935. Deponent then went to work on appellants' brief, to which he gave much time, thought and study with his associates Edward J. Clarke and Sidney G. Rosenbloom. Appellants' brief was eventually prepared, printed and filed on the 13th day of September, 1935. On the 18th day of October, 1935, deponent received appellees' brief. On that brief appeared the names of Nathan Burkan, J. Robert Rubin, Louis D. Frohlich, David O. Decker, Herman Finkelstein. The appeal was argued in the Circuit Court of Appeals on the 14th day of November, 1935. On the 17th day of January, 1936, the Circuit Court of Appeals handed down its decision reversing the trial court and

3282

ordering and directing that complainants have an accounting of profits and be allowed counsel fees both in the Circuit Court of Appeals and in this court. A petition for a rehearing was filed by the respondents, which was denied.

On or about the 8th day of February, 1936, the mandate of the Circuit Court of Appeals was filed. The decree was prepared, served, settled and signed. About April 4, 1936 defendants served copies of a petition for a writ of certiorari to the United States Supreme Court with a notice of filing.

*Affidavit of Arthur F. Driscoll.*

A brief in support of said petition was filed by amici curiae, consisting of the following corporations: 3283

Twentieth Century-Fox Film Corporation  
 Paramount Pictures, Inc.  
 Columbia Pictures Corporation  
 Liberty Pictures Corporation  
 B. F. Zeidman Productions, Ltd.  
 Stage & Screen Productions, Inc.  
 Academy Pictures Distributing Corporation  
 Aladdin Pictures Corporation  
 Warner Bros. Pictures, Inc.  
 First National Pictures, Inc.  
 RKO Radio Pictures, Inc.  
 Republic Pictures Corporation  
 Resolute Pictures Corporation  
 Spectrum Pictures Corporation  
 DuWorld Pictures, Inc.  
 Talisman Pictures Corporation  
 Aeolian Pictures Corporation

3284

In the application for writ of certiorari defendants were represented by Hon. Thomas D. Thacher.

On May 4, 1936 the petition for writ of certiorari was denied. Thereafter complainants gave notice of settlement of the decree in the District Court, but before the said decree was signed, defendants caused to be served upon complainants an order to show cause for a rehearing. The motion for rehearing came on before Judge Woolsey, who denied it, with leave to renew the motion before the Circuit Court of Appeals. Thereafter defendants caused to be served upon complainants order to show cause returnable in the Circuit Court of Appeals asking for a rehearing on June 1st. That motion was heard by the Circuit Court of Appeals and denied from the Bench.

3285

About this time, Nathan Burkan, chief counsel for the defendants, died, and Leopold Friedman appeared as attor-

*Affidavit of Arthur F. Driscoll.*

3286 ney for Loew's, Inc., and Samuel D. Cohen appeared as attorney for Culver Export Corporation. Thereafter a decree was submitted to the District Court for settlement and signature, and on or about July 29, 1936, Judge Knox signed the decree appointing Gordon Auchincloss as Special Master to take and state the profits of the various defendants made from the picture LETTY LYNTON. Thereafter the matter was taken up with the Special Master and he was served with a copy of the decree and notice of entry, and hearings were arranged before the Special Master. The first hearing was held on the 9th of September, 1936. Thereafter hearings were held on October 21, November 19, November 20, December 2, December 11, 1936 and February 1, 1937. Thereon it was arranged that the Special Master should go to California to take further testimony. The Special Master, deponent and a certified public accountant, who accompanied deponent, left for California on Thursday, February 25th, reaching Los Angeles on Sunday, February 28th. Hearings began before the Special Master at the Studio of the Metro-Goldwyn-Mayer Corporation on Monday, March 1st. Hearings were held March 1, March 2, March 3, March 4, March 5, March 6, March 8 and 9. On all of those days except March 9, morning and afternoon sessions were had, and on March 8 an evening session was held. Hearings were completed on March 9th and on March 12th deponent and the said accountant started back to New York, arriving back in New York on March 15th, having been absent for eighteen days.

3288 Upon returning to New York hearings were resumed before the Special Master. Hearings were held on April 20th, April 21st, April 23rd, May 5th, May 6th, May 7th, May 17th, June 28th, June 30th, July 6th (the hearing lasting all day); July 9th, August 11th, September 20th, October 5th, November 22nd, all day, November 23rd and December 6th, 1937, and February 7th and March 16th, 1938.

*Affidavit of Arthur F. Driscoll.*

When the hearings adjourned to California, Mr. Walter H. Pollak appeared as chief trial counsel for defendants. Upon the hearings had in California, in addition to Mr. Pollak, defendants were represented by J. Robert Rubin and Samuel D. Cohen from New York City, and by Loeb, Walker & Loeb of Los Angeles, by Milton H. Schwartz, Esq. and Walter S. Hilborn, Esq.

3289

Upon returning to New York City for further hearings defendants were represented by Mr. Pollak, Mr. Cohen and Mr. Earle L. Beatty, who appeared for and on behalf of defendants.

The taking of testimony before the Special Master has involved much time and study, not only by deponent, but by Edward J. Clarke and Sidney G. Rosenbloom, two of deponent's associates, and by others in deponent's office. Twelve hundred and thirty-nine pages of testimony were taken in New York and six hundred thirty-one pages in California.

3290

The services performed by the attorneys for the complainants in this court beginning with the month of May, 1932, and continuing down to May, 1938, or six full years, comprise the beginning of the action herein, the argument of various motions, including the motion for a preliminary injunction and the taking of the account with hearings spread out from September 9, 1936 to March 16, 1938, including a trip to California which meant an absence from New York City and from deponent's office for a period of eighteen or nineteen days. It is absolutely impossible even to estimate the number of hours or days spent in this matter during the six years in question. Deponent begs leave to submit as part of these motion papers copies of all briefs and printed record prepared and submitted in the Circuit Court of Appeals and this court.

3291

The services rendered in the Circuit Court of Appeals involved the perfecting of the appeal from the decision made by Justice Woolsey, the argument thereof in the



*Affidavit of Arthur F. Driscoll.*

92 Circuit Court of Appeals, and the reversal of the decree and remitting of the matter back to the District Court. Deponent is of the opinion that the services rendered by deponent and his associates and office in the District Court are reasonably of the value of One Hundred Thousand Dollars (\$100,000), and that the services rendered in the Circuit Court of Appeals are of the reasonable value of \$35,000.

93 WHEREFORE, this deponent prays that an allowance may be made to the complainants for counsel fees for services rendered in the District Court in the sum of \$100,000, and for services rendered in the Circuit Court of Appeals in the sum of \$35,000.

ARTHUR F. DRISCOLL.

Sworn to before me this  
31st day of May, 1938.

94 LILLIAN E. McMAHON,

Notary Public.

Queens Co. Clk's No. 1224, Reg. No. 5108.

N. Y. Co. Clk's No. 181, Reg. No. 9Mc46.

Commission Expires March 30, 1939.

SCHEDULE AS TO SERVICES RENDERED, AN-  
NEXED TO AFFIDAVIT OF ARTHUR  
F. DRISCOLL.

3295

STATEMENT OF SERVICES RENDERED

by

O'BRIEN, DRISCOLL & RAFTERY

In the Matter of  
EDWARD SHELDON and MARGARET AYER BARNES

against

METRO-GOLDWYN PICTURES CORPORATION, et al.

3296

In the following entries the individuals rendering the  
services are designated as follows:

MLM— Mr. Malevinsky  
O'B — Mr. O'Brien  
AFD — Mr. Driscoll  
EJC — Mr. Clarke  
BP — Mr. Pepper  
SGR — Mr. Sidney G. Rosenbloom  
ESC — Mr. Coons  
PO'B— Mr. Paul O'Brien  
ECR — Mr. Raftery  
MMR— Mr. Milton M. Rosenbloom

3297

1932

5/13—Consulted by Mrs. Barnes re copyright infringement  
by picture LETTY LYNTON. MLM

5/14—"Dishonored Lady" and "Letty Lynton"—prepared  
lengthy dramatic opinion for Mrs. Barnes and Mr.  
Sheldon; telegraphed Mrs. Barnes; sent copy to Mr.  
Sheldon. MLM

5/18—Dictated analysis of book LETTY LYNTON by Mrs.  
Belloc-Lowndes, 20 pages; sent copy to Mrs. Barnes

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3298

and Mr. Sheldon; two wires to Mrs. Barnes; sent wire to Mr. Sheldon. MLM

5/19—Completed analysis of book LETTY LYNTON. Wire to Mrs. Barnes.

Letter to Jonathan Cape and Harrison Smith asking information re when LETTY LYNTON was first published in England; letter to Philip Guedalla requesting copy of LETTY LYNTON. MLM

5/20—Letter to Mrs. Barnes; received wire from Mrs. Barnes. MLM

3299

5/23—Examined Mr. Malevinsky's synopsis and opinion in re dramatic composition, DISHONORED LADY and the motion picture LETTY LYNTON. O'B

5/24—Examined Mr. Malevinsky's memo; conferred with Mr. O'Brien and Mr. Malevinsky. AFD.

Suggested bringing suit in Chicago. MLM

5/28—Commenced the preparation of affidavit of Margaret Ayer Barnes and dictated all day with Mrs. Barnes present. MLM

5/30—Occupied all day with Mrs. Barnes dictating balance of affidavit. MLM

5/31—Memo to Mr. Malevinsky re papers to be drawn. Letter to Paul R. Reynolds to ascertain when LETTY LYNTON was first published in England; prepared draft of complaint in Southern District Court; called on Mr. Sheldon and discussed this case with him and the affidavit of Margaret Ayer Barnes. MLM

3300

6/1—Occupied with Mrs. Barnes going over affidavit, paragraph by paragraph, covering 48 pages and making interlineations and changes. MLM

6/2—Occupied with Mrs. Barnes from eleven to one o'clock going over affidavit; studied bill of complaint and made changes therein. Letter to Paul Reynolds to cable to England and find out when

*Schedule as to Services Rendered, Annexed to  
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3301

LETTY LYNTON was serialized in Daily Mail. Letter to Mr. Sheldon. MLM

6/3—Mrs. Barnes at office; started redictating redraft of affidavit. MLM

6/4—Mrs. Barnes called at 9:00 A. M. and remained until 2:30 P. M.; completed dictating draft of affidavit. MLM

6/6—Mrs. Barnes at office, discussing phases of case; drafted 47 pages of affidavit of Margaret Ayer Barnes. MLM

6/7—Mrs. Barnes and Mr. Malevinsky considering draft of affidavit and making notes of changes to be made, all day. MLM

3302

6/8—Mrs. Barnes here all day; considering redrafting of affidavit; dictated and copied 21 pages of affidavit. MLM

6/8—Examined draft of affidavit of Mrs. Barnes—2 hrs. O'B

6/9—Took home motion papers; spent evening examining them. AFD

6/9—Mrs. Barnes called at 9:00 A. M. and went over final draft of affidavit; changes made; occupied until 4:00 o'clock; revised 12 pages of affidavit; started dictating interrogatories and had same transcribed. MLM

3303

6/10—Prepared memo for Mr. Malevinsky. AFD  
Mrs. Barnes called and considered the revised pages of affidavit and then executed same. Occupied all morning; dictated balance of affidavit; dictated interrogatories. MLM

6/11—Letter to Mr. F. M. Guedalla of London requesting him to send volume. Letter to Gabriel Hess asking him to send opinions on infringement cases. Dictated revised interrogatories. MLM



*Schedule as to Services Rendered; Annexed to  
Affidavit of Arthur F. Driscoll.*

3304

6/13—Preparing interrogatories; revised complaint. Considered with Mr. Pepper, after receiving memo from ECR about bringing in Metro-Goldwyn-Mayer Pictures, Metro-Goldwyn-Mayer Distributing Corp., Loew's, Inc. and Culver. Dictated complaint bringing in those corporations. Occupied all morning. Met Mr. Sheldon at his apartment at 2:30 and considered with him Mrs. Barnes' affidavit, etc. MLM

3305

6/14—Occupied all day reading over affidavit and revising same; recopied 14 pages with revisions to Margaret Ayer Barnes' affidavit. MLM

6/15—Memo for Mr. Olbert. Letter to Charles Frohman, Inc. asking for complete file of photographs; letter to Vandamm Studios. Dictated affidavit of Edward Sheldon; sent affidavit by Miss Reilly to Mr. Sheldon for execution. Worked on interrogatories from 10:30 to 11:30 A. M. and again from 2:00 to 4:00 in the afternoon. MLM

6/16—Examined memo from Mr. Malevinsky; wrote reply. AFD

3306

Mr. Giffen called and gave statement of facts concerning the proposed negotiations; drafts of affidavit prepared and had affidavit signed by Mr. Giffen; continued dictation of interrogatories and making changes in previous interrogatories; redrew five pages of interrogatories. MLM

6/17—Dictated memorandum to Mr. Malevinsky re damages in above case. Examined cases; looked up law. BP

Occupied all day on interrogatories; on reading and dictating same. Had 36 pages of interrogatories transcribed; prepared detailed letter to Mr. Sheldon and sent copy of same to Mrs. Barnes with accompanying letter. MLM

*Schedule as to Services Rendered, Answered to  
Affidavit of Arthur F. Driscoll.*

3307

6/18—Continued dictating of interrogatories; sent letter to Mr. Sheldon; had 14 pages of interrogatories transcribed. MLM

6/19—Revised set of interrogatories; had same transcribed. MLM

6/21—Redictated interrogatories from No. 54; embodying new set-up. Had 36 pages transcribed. MLM

6/22—Telegram to Mrs. Barnes re coming here after 4th of July. Continued dictating interrogatories. MLM

6/23—Continued and finished dictating interrogatories; dictated order to show cause. Had 18 pages of interrogatories transcribed. MLM

3308

6/24—Examined Mr. Malevinsky's interrogatories; prepared memorandum thereon.

Dictated proposed order for interrogatories; at Judge Woolsey's Chambers. BP

Completed papers and put them in final form. MLM

Subpoena, Complaint, interrogatories and injunction papers served upon Metro-Goldwyn-Mayer Distributing Corporation. AFD

Order to show cause signed by Judge Woolsey, returnable July 5th; letters to Mr. Sheldon and Mrs. Barnes enclosing copy of interrogatories; memorandum to MMR re service of papers on other defendants, commenced making copy of interrogatories; copied 12 pages. MLM

3309

6/25—Letter to Gabriel Hess requesting certain appeal papers. Telegram to Mrs. Barnes; sent copy of same to Mr. Sheldon; letter to Jonathan Cape & Harrison Smith requesting 5 volumes of LETTY LYNTON; letter to F. M. Guedalla; letter to Wyld & Son. Memo re Independent Exhibitors; detailed letter to Mrs. Barnes, and sent copy of that letter

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3310

to Mr. Sheldon. Made extra copy of interrogatories and went over papers. MLM

6/27—Subpoena, complaint, interrogatories and injunction papers served upon Metro-Goldwyn Pictures Corporation, Loew's, Inc. and Culver Export Corporation.

6/27—Completed extra copies of interrogatories (23 pages); commenced dictating authorities on infringement and damages; occupied 5 hours. Memo to Mr. O'Brien. MLM

3311

6/28—Continued dictation of law brief on damages; had 35 pages transcribed. Letter to Barrell Clipping Bureau for clippings on reviews of LETTY LYNTON on April 30. MLM

6/29—Occupied all day dictating points of various cases; day letter to Mrs. Barnes; working on appendix No. 1 involving cases on infringement. MLM

6/30—Day letter to Mrs. Barnes; letter to Albert Free; preparing heading for appendix No. 1 to brief; working on Appendix No. 1, embodying cases covering infringement. (27 pages) MLM

7/7—Dictated statement to Mr. Malevinsky re report of Washington trip. BP

3312

Dictated Appendix No. 2 covering sections 1 to 5 and dictated part of Section 6; occupied all day on matter.

7/8—Dictated balance of Section 5; considered Appendix No. 2; and made certain changes; Mr. Frohlich telephoned and requested further extension of one which I gave him; decided to change brief; added another authority to Appendix No. 2 and compared same to our case; transcribed and recopied Section 1 of the brief. MLM

Motion for injunction adjourned to July 19. Defendants' time to answer extended to July 29.

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3313

7/9—Dictated additional case to Appendix No. 1; Mrs. Barnes and Mr. Barnes called at 9:30 and occupied with them going over papers drawn. At 2:30 Mr. Malevinsky, Mr. and Mrs. Barnes went to Mr. Sheldon's apartment for conference. MLM

7/11—Continued redictating from Section 4 to Section 6 inclusive; occupied 6 hours. Transcribed 9 pages. MLM

7/12—Finished dictating Appendix No. 2; transcribed 34 pages; commenced dictating Appendix No. 3, comparing the Madeleine Smith trial. MLM

7/13—Revised and continued dictating Appendix No. 3; comparing the Madeleine Smith trial; had 20 pages transcribed. MLM

3314

Examined Mr. Malevinsky's brief and commented on it. O'B

7/14—Commenced dictating Appendix No. 4 and embodying and covering the novel by Mrs. Lowndes. Had 20 pages of this appendix transcribed. Mrs. Barnes was at the office; conference from 9:30 A. M. to 4:00 P. M. MLM

7/15—Continued dictating Section 7 comparing the novel LETTY LYNTON by Mrs. Lowndes; changed 1 to 6, sections incorporating other interrogatories; transcribed 30 pages of Appendix No. 4. Mrs. Barnes here from 10:00 to 3:00; in the afternoon Mr. Malevinsky and Mrs. Barnes went over previous continuity and continuity received from Mr. Burkan. MLM

3315

7/16—Worked on Appendix No. 5 dealing with validity of the copyright of complainants' play. Transcribed 14 pages. MLM

7/18—Received objections to interrogatories and received affidavits in opposition to injunction. AFD  
Mr. and Mrs. Barnes here; conference practically



*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

all day; received affidavits from defendants at 8:30 P. M. in the evening; read same; prepared stipulations to make additions to complaint; sent same by hand to Mr. Frohlich with letters. MLM

7/19—Argued motion for preliminary injunction before Judge Goddard. Occupied all day at court house. Mr. and Mrs. Barnes here for conference. MLM

7/20—Mr. and Mrs. Barnes here; long conference; commenced dictating Appendix No. 6 in reply to defendants' affidavits. Had 21 pages transcribed; sent telegram to Mr. Sheldon. MLM

7/21—Received defendants' briefs. Conference Mr. and Mrs. Barnes; redictated Appendix No. 6 after receiving briefs. Had 34 pages transcribed.

7/22—Continued dictating Appendix No. 6; Mrs. Barnes here for conference; had 37 pages transcribed. MLM

Stipulation signed consenting that defendants' objections to interrogatories of complainants as set forth in their memorandum may be accepted by the court, and the court may make its decision thereon as if a motion had been made. AFD

7/23—Completed Appendix No. 6; had 15 pages transcribed; sent balance to printer and requested briefs to be in the office at 9 o'clock. MLM

7/25—Sent Mrs. Barnes copies of Appendix No. 6. MLM Orally consented to submit briefs on the 26th, with consent of Judge Goddard. AFD

7/26—Submitted briefs. AFD

Wrote Judge Goddard correcting Fox Film to Fox Theatre Corp. Sent copies of letters to Mr. Burkan and Mr. Rubin; wrote Mrs. Barnes in detail, and sent her copy of defendants' reply brief. Wrote Mr. Sheldon enclosing copy of defendants' reply brief. MLM

*Schedule as to Services Rendered; Answered to  
Affidavit of Arthur F. Driscoll.*

3319

7/27—Received affidavit of Clarence Brown and examined it. AFD

Wrote Mrs. Barnes in detail after considering defendants' reply brief and reaction to same (8 pages); sent copy of letter to Mr. Sheldon. MLM

7/29—MLM appeared in court at Judge Goddard's request. Court denied motion for injunction but indicated he would order early trial (October) as "complainants were entitled to that." Received and examined answer.

8/1—Dictated stipulation withdrawing portion of order to show cause requiring respondents to answer interrogatories and allowing discovery and inspection of books, records, etc. BP

3320

Received letter from Mrs. Barnes; replied to same; sent Mr. Sheldon copies of letters sent to Mr. and Mrs. Barnes; wrote Mr. Barnes, Mrs. Barnes and Mr. Sheldon giving them opinion rendered by Judge Goddard on the motion. Letter to Mr. O'Brien. MLM

8/2—Received letter from William Brown, acting register of copyrights stating that we take up with E. P. Secker, Inc. the matter of having the manuscripts photostatted; wrote detailed letter to E. P. Secker, Inc. concerning same and asking their prices. MLM

3321

8/5—Letter to E. P. Secker, Inc. requesting them to make the photostatic copies at the prices mentioned in their letter. Detailed letter to Mr. Barnes asking him to look up Judge Brandeis' opinion on infringement (5 pp.); sent copy of letter to Mrs. Barnes and Mr. Sheldon. Commenced dictating Appendix No. 7 re damages. MLM

8/6—Memo to Mr. Pepper on the phrase "in no other case", and requesting him to give his opinion; re-

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

ceived telegram from E. P. Secker requesting authorization; sent day letter to them and letter to Thorvald Solberg, Register of Copyrights, enclosing copy of day letter (3 pp.); sent copy of letter to E. P. Secker; letter to Mrs. Barnes sending her set of affidavits filed by adversaries. MLM

8/8—Worked on Appendix No. 7—12 pages. MLM

8/9—Served proposed order and notice of settlement for Aug. 11. AFD

Worked on appendix No. 7—10 pages. Copied adversaries' affidavits, 11 pages. MLM

23 8/10—Received letter from Mrs. Barnes; acknowledged receipt.

8/11—Conference with Mr. O'Brien. AFD

Submitted order, AFD. Received motion papers for bill of particulars returnable Aug. 16. AFD

Worked on draft brief of appendix No. 7 on damages. MLM

8/15—Phoned Mr. Frohlich's office and Mr. Rubin's office to obtain their consent to withdraw the demand for a bill of particulars; said they would withdraw provided we furnished them with the particulars; dictated memo in opposition to motion; letter to E. P. Secker, Inc. enclosing check in payment of bill. MLM

24 8/16—Argued motion re bill of particulars before Judge Patterson. AFD

Commenced dictating preparatory brief. 18 pp. MLM

8/17—Continued dictating preparatory brief. (19 pp.) Wrote Nathan Burkan asking him to prepare order on the particulars granted to them on their motion; otherwise motion was denied. MLM

8/18—Continued dictation of preparatory brief (30 pp.). MLM

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3325

8/19—Continued dictation of preparatory brief from 9:00 to 12:15 and 2:00 to 4:00 (22 pp.). MLM

8/20—Continued dictation of preparatory brief. 12 pp. MLM

8/21—At Westerly. Read affidavits of defense. O'B

8/23—Dictated preparatory brief from 9:00 to 12:30 and 2:00 to 3:30; had 21 pages transcribed. MLM

8/24—Working on three continuities; worked on ~~brief~~. MLM

8/25—Received motion papers for commission to take testimony of various witnesses in Los Angeles and London, including Marie Adelaide Belloc-Lowndes and Mabel Christine Broughton. Motion returnable Aug. 30. MLM

3326

Working all day keying the three continuities; 30 pages of preparatory brief. MLM

8/26—Mr. Malevinsky worked all day keying the three continuities and making comparisons; letter to Mr. Sheldon sending him working sheets and printers proof copy of three continuities; also sent the same papers and copy of letter to Mr. Sheldon to Mrs. Barnes, by express. Letter to Nathan Burkan advising him of receipt of motion papers to take depositions of witnesses in London and California, and advising him that we could stipulate and he should prepare interrogatories and I would cross them within 24 hours. Copy of letter to J. Robert Rubin. MLM

3327

8/27—Stipulation signed withdrawing motion for depositions. AFD

MLM occupied all morning working on three continuities.

9/13—Conference, Mr. O'Brien, Mr. Malevinsky, Mr. Driscoll and Mrs. Barnes—2½ hrs.



*Schedule as to Services Rendered, Annexed to Affidavit of Arthur F. Driscoll.*

3328

9/21—Served proposed order returnable Sept. 23 to set case down for trial near head of calendar. (The order served on Aug. 9 appears to have been lost in court, and was never signed by Judge Goddard. This is merely a new order covering the same subject matter.)

9/28—Law Journal—order signed by Judge Goddard.

9/29—Prepared memorandum for Mr. Malevinsky re income tax questions involved in suit; preparation of memorandum for Mr. Raffery. ESC

3329

9/30—Served copy of order with notice of entry and notice to produce on J. Robert Rubin and Nathan Burkan. AFD

10/3—Chicago—several telephone communications with Mr. Cecil Barnes; conference at office of Mr. Barnes from 2:30 to 4:00 o'clock with Mrs. Barnes. O'B

10/10—Went to Federal Court with Mr. Frohlich and arranged for adjournment of cases to Dec. 5th. AFD

10/11—Wrote and wired Mr. Barnes re adjournment to Dec. 5. AFD

10/17—MLM died and AFD took charge.

10/20—Took home Mr. Pepper's report re his visit to Washington and studied it. AFD

10/21 to 10/25—Devoted time almost exclusively to studying case. AFD

3330

10/26—Spent entire evening studying case. AFD

10/28—Received letter from Mrs. Barnes; answered it. AFD

10/29—Conference over telephone with Mr. Sheldon. AFD

11/1—All previous evening and all the night before that until midnight studying case. AFD

11/2—Long conference with Mrs. Barnes in the office; conference with Mr. Frohlich over the telephone; he promised to procure and send to me copy of continuity attached to deposition. Worked all eve-

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3331

ning studying manuscript; telephone conference with Mrs. Barnes. AFD

11/4—Conference in the office; spent most of afternoon studying case. AFD

11/5—Conference over telephone with Mrs. Barnes. AFD

11/9—Telephone conference with Mr. Fröhlich. AFD

11/11—Gave manuscript to expert for examination and opinion; long conference with him today. Expert strongly of opinion that picture constitutes infringement; spent the evening working on case. AFD

11/18—Received letter re LETTY LYNTON; submitted to Mr. O'Brien. AFD

11/19—Received telegram from Mrs. Barnes; answered it. AFD

3332

11/22—Conference with Mr. Burkan over the telephone; wired Mrs. Barnes. AFD

11/23—Conference over the telephone with Mr. Burkan; recd. telegram from Mrs. Barnes; sent her reply telegram. AFD

11/25—Received wire from Mrs. Barnes; wrote her in reply. Received wire from Mr. Barnes; wrote him long hand letter in reply. AFD

11/29—Conference with Mr. Burkan over the telephone. AFD

12/1—Conference with Mrs. Barnes, Mr. O'Brien and Mr. Driscoll; 1 hr. Made memo for Mr. Schenck to compare director's scenario with one in files of Federal Court. AFD

3333

12/1—Conference with Mrs. Barnes and Mr. Driscoll O'B

12/5—Case on calendar for trial; adjourned to Jan. 16, 1933. AFD

12/29—Telephone conference with Mr. Fröhlich. AFD

12/30—Wrote long letter to Mrs. Barnes. AFD

12/31—Conference with Mr. Fröhlich over the phone. AFD

*Schedule as to Services Rendered, Anterred to  
Affidavit of Arthur F. Driscoll.*

1933

- 1/3—Wrote Mrs. Barnes long letter. AFD
- 1/5—Conference with Nathan Burkan regarding request for postponement of trial; telephoned Mr. Driscoll at his home re same. O'B
- 1/6—Telephone conference with Mr. Frohlich of Burkan's office; conference with Mr. O'Brien; received letter from Mrs. Barnes; answered it. AFD
- 1/17—Wrote Mrs. Barnes re position of case on calendar. AFD
- 1/23—Received letter from Mrs. Barnes; answered it. AFD
- 1/31—Wrote Mrs. Barnes re position on calendar. AFD
- 2/1—Case appeared on Day Calendar. Wrote Mrs. Barnes. AFD
- 2/3—Wrote Mrs. Barnes. AFD
- 2/9—Wrote Mrs. Barnes re position of case on calendar. Working on preparation of case for trial. AFD
- 2/10—Wrote Mrs. Barnes again re position of case on calendar; suggested she come to New York to begin final preparation for trial. AFD
- 2/13—Spent entire holiday at Bar Association preparing for trial. AFD
- 2/14—All day at Bar Association preparing for trial; several phone conversations. AFD  
Telephone conference with Mr. Burkan. Went to Bar Association where Mr. Driscoll was working and conferred with him regarding Mr. Burkan's request for postponement of trial. O'B
- 2/15—All day at Bar Association preparing for trial; prepared affidavits and order to show cause why inspection of film should not be decreed; sent it to court for signature of judge; made service on parties. AFD

*Schedule as to Services Rendered, Annexed to  
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3337

2/16—Working all day on preparation for trial; conference with Mrs. Barnes over the telephone; conference with Mr. O'Brien after an interview with Mr. Burkan; conference with Mr. Frohlich over the telephone; agreed to adjourn motion for inspection to Tuesday. AFD

2/17—Order to show cause and inspection adjourned to Feb. 21. AFD

Prepared long memorandum for Mr. O'Brien re conference with Mr. Frohlich. Conference with Mrs. Barnes over the telephone; conference with Mr. O'Brien in the office in re talk he had with Mr. Burkan; two telephone conferences with Mr. Frohlich; went with Mr. Frohlich to Federal Court and interviewed Judge Knox; arranged to have trial of action adjourned to April 10. AFD

3338

Conference with Mr. Driscoll and Mrs. Barnes, also conferred with Nathan Burkan. O'B

2/18—Accompanied by Mrs. Barnes, Mr. Pepper and Mr. Rosenbloom went to Film Building at 45th St. and 9th Ave. and witnessed screening of LETTY LYNTON; conference with Mr. Frohlich over the telephone. AFD

2/20—Wrote Mr. Sheldon re adjournment of trial. AFD

2/21—Motion for inspection withdrawn. Trial adjourned to April 4 preemptorily. AFD

3339

2/23—Received wire from Mr. Sheldon; telephoned and made appointment to see him Tuesday next. AFD

2/28—Went to Mr. Sheldon's home to confer with him. AFD

3/1—Wrote Mr. Sheldon enclosing copies of interrogatories and cross-interrogatories of witnesses examined in California. AFD

3/29—Wrote to Mrs. Barnes. AFD

4/3—Received letter from Mrs. Barnes; wrote and telegraphed her. AFD



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- 4/4—Spent evening re-reading and re-studying the book  
LETTY LYNTON. AFD
- 4/5—Several communications over telephone with Nicholas Schenck relative to postponement of trial; sent written message to Mr. Driscoll in court on trial of another case. Conferred with Mr. Driscoll at lunch. Long distance telephone communication with Mrs. Barnes from Chicago; communication with Mr. Schenck; later conference with Mr. Rubin; decided to go on with the trial on Monday. O'B. While in court received memo from Mr. O'Brien, delivered to me by Mr. Clarke, of request of Nicholas Schenck to adjourn trial to 19th; returned to the office, conferred with Mr. O'Brien; telephoned to Mrs. Barnes in Chicago and discussed the matter with her; telephoned to Mr. Sheldon and discussed the matter with him; Mr. O'Brien had further conference with Mr. Schenck; Mrs. Barnes called us on the telephone from Chicago and we had a further discussion; later, had conference with Mr. Rubin, respondent finally withdrawing its request for adjournment and advising us that they would be ready for trial on Monday, the 10th. Telegraphed Mrs. Barnes to that effect. Phoned Mr. Sheldon to that effect. AFD
- 4/6—Spent entire evening reviewing and studying scenario of picture. AFD
- 4/7—At Bar Association all day with Mr. Clarke and Mr. Rosenbloom preparing for trial. AFD
- 4/8—Spent all day preparing for trial; conference with Mr. Hess over telephone. AFD
- Conference with Mrs. Barnes and Mr. Driscoll. O'B
- 4/10—At work all day in preparation for trial; took papers home and worked on them in evening. AFD

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3343

4/11—Worked all day preparing for trial; took papers home and spent the evening on it. AFD

4/12—Worked all day in preparation of trial. AFD

4/13—Spent most of the day on the matter; various conferences and telephone calls, including Mr. Burkan's office, Mr. Clarke and Mr. Rosenbloom; visited court; conferred with Judge Woolsey and arranged for trial to start before Judge Woolsey on Friday, April 21, at 4:00 P. M. AFD

4/15—Arranged with Bar Association for use of trial room for Saturday, April 22. AFD

4/17—Received from attorneys copies of defendants' summaries; forwarded one to Mrs. Barnes, one to Mr. Sheldon; took one home and read part of it. AFD

3344

4/19—At 5:00 P. M. at the Loew Building for a screening of the picture LETTY LYNTON for Judge Woolsey, accompanied by Messrs. Clarke and Rosenbloom AFD

4/20—Spent all afternoon preparing for trial. AFD

4/21—Spent large part of day preparing for trial; all afternoon with Mr. and Mrs. Barnes. AFD

4/22—Began trial. Engaged all day till 7:00 P. M. at Bar Association in trial of action. AFD

Conference with Mr. Driscoll at his home regarding trial at Bar Association. O'B

3345

4/23—Sunday—engaged all morning till 1:00 P. M. in trial of action at Bar Association. AFD

Sunday—conference with Mr. Driscoll at his home regarding trial at Bar Association. O'B

4/24—Engaged all day at Bar Association in preparation of brief to be submitted on behalf of complainants. AFD

4/26—Received letter from Judge Woolsey; answered it; wrote Mrs. Barnes enclosing copy of Judge Woolsey's letter; received letter from Mr. Burkan; answered it. AFD

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- 4/28—Telephone conference with Mrs. Barnes; went to Mr. Sheldon's apartment; conferred with him. AFD
- 5/1—Spent most of day working on brief. AFD
- 5/2—All day working on brief; Mrs. Barnes present all afternoon. AFD
- 5/3—All day in library working on brief; took revised draft home and worked on it. AFD
- 5/6—Working on brief. AFD
- 5/8—Spent entire evening till after 11:00 P. M. working on brief. AFD
- 5/10—Spent practically all day working on brief. AFD
- 5/12—Working on draft of brief; received letter and telegram and summaries from Mrs. Barnes; took summaries of play and picture home; spent the evening reading, studying and revising them; wrote Mrs. Barnes. AFD
- 5/13—Worked on brief nearly the entire day. AFD
- 5/15—Worked on brief all day; received from Mrs. Barnes summaries of trial and novel; wrote long letter to Mrs. Barnes. AFD
- 5/16—Worked most of day on brief; took papers home and spent part of evening on them; conference with Mr. McQueeney, printer; gave him summaries. AFD  
Worked in library with Mr. Driscoll. EJC
- 5/19—Working on revision of brief. AFD and EJC
- 5/22—Memo for Mr. Clarke and Mr. Rosenbloom re authorities for reply brief; spent evening revising brief. AFD
- 5/23—Finished revision of brief and returned to printer. AFD
- 5/25—Wrote Mr. Sheldon. AFD
- 5/27—Had briefs and summaries served on Mr. Burkan and Mr. Rubin; mailed copies to Mrs. Barnes and Mr. Sheldon. AFD

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3349

5/31—Received letter from Mr. Sheldon; answered it.  
AFD

6/5—Conference with Mr. Clarke; received proposed stipulation from Mr. Burkan and drafted letter to him. AFD

6/6—Communication to Mr. Rubin regarding Mr. Driscoll's letter. O'B

6/19—Wrote Mrs. Barnes enclosing copy of letter from Mr. Burkan and copy of letter written Judge Woolsey by Mr. Rubin; copy of letter to Mr. Burkan and copy of letter from Judge Woolsey, all re extending respondents' time to serve brief. AFD  
Worked with Mr. Driscoll. EJC

3350

6/22—Received letter from Judge Woolsey; answered it. Wrote Mrs. Barnes and Mr. Sheldon enclosing each copy of Judge Woolsey's letter and our reply. AFD

Worked with Mr. Driscoll. EJC

6/24—Received defendants' answering briefs; examined same. AFD

6/25—Sunday. Worked all evening with Mr. Clarke and Mr. Rosenbloom. AFD

6/26—Working all day and all evening with Mr. Clarke and Mr. Rosenbloom on reply brief at Bar Association. AFD

3351

6/27—Worked all day and all evening with Mr. Clarke and Mr. Rosenbloom on reply brief. AFD

6/28—Worked all day and all evening with Mr. Clarke and Mr. Rosenbloom on reply brief. AFD

Received letter from Mrs. Barnes; answered it. AFD

6/29—Worked all day and all evening with Mr. Clarke and Mr. Rosenbloom on reply brief in library; received letter from Judge Woolsey setting July 13th as date for argument; wrote Mrs. Barnes enclosing



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52

copy of Judge Woolsey's letter; also similar letter to Mr. Sheldon. AFD

6/30—Engaged all day and all evening on reply brief. AFD

7/1—Engaged all day on reply brief; received letter from Mrs. Barnes; answered it. AFD

Read final proofs of brief; worked all morning. AFD

7/12—Left for Petersham. AFD

7/13—At Petersham—argument before Judge Woolsey; started at 10:00 A. M. and lasted until 6:30; adjourned to July 14. AFD

53

Spent evening in hotel working on matter. AFD

7/14—At Petersham—argument all day. AFD

7/19—Conference with Mrs. Barnes over telephone. AFD  
Received letter from Mr. Decker enclosing copy of letter to Judge Woolsey; wrote letter to Mr. Decker acknowledging receipt of same. AFD

7/20—Long Conference with Mrs. Barnes; visited Mr. Sheldon's home. Received letter from Judge Woolsey; answered it. AFD

8/23—Wrote Mrs. Barnes and Mr. Sheldon. AFD

10/27—Conference with Mrs. Barnes in the office. AFD

54

11/13—Received letter from Mrs. Barnes enclosing letter written by Mr. X. to her in 1930; answered Mrs. Barnes' letter. AFD

1934.

2/7—Letter to Mrs. Barnes. AFD

2/23—Received a letter from Mrs. Barnes; telephoned Mr. X. AFD

2/27—Received letter from Mrs. Barnes; wrote her at Park Lane Hotel, New York. AFD

3/1—Conference with Mrs. Barnes in the office. AFD

3/2—Conference with Mrs. Barnes over telephone. AFD

3/6—Conference with Mrs. Barnes in the office. AFD

*Schedule as to Services Rendered, Annexed to  
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3355

4/21—Received letter from Mrs. Barnes and answered it.  
AFD

4/23—Wrote letter to Mr. Sheldon and sent copy to Mrs.  
Barnes. AFD

4/24—Telephone conference with Mr. Sheldon. AFD

4/26—Attended to telegram from Mrs. Barnes; long dis-  
tance telephone conference with Mrs. Barnes at my  
home in Chicago (15 minutes); sent telegram to  
her. O'B

5/4—Letter to Mrs. Barnes. O'B

5/14—Conferred with Mr. Driscoll and Mr. Raftery; letter  
Mrs. Barnes. O'B

6/21—Conference with Mrs. Barnes at the office; also  
conferred with Mr. Driscoll. O'B

3356

6/22—Conference with Mrs. Barnes at the office. O'B

8/1—Law Journal reports "Complaint dismissed; see  
opinion." Secured copy of opinion and examined  
it at length. Communicated with Mrs. Barnes;  
communicated with Mr. Sheldon.

8/3—Received decision and judgment with notice of  
settlement returnable August 6. Examined them.

8/6—Decision and judgment submitted for signature.

8/13—Received order with notice of filing and decree with  
notice of filing. Examined them. Sent copies to  
Mrs. Barnes and Mr. Sheldon.

3357

8/14—Began preparation of petition for appeal and order  
allowing petition.

8/17—Submitted order allowing petition for appeal for  
signature.

8/24—Order allowing petition for appeal reported and  
signed in Law Journal. Secured copy of order.

9/10—Received wire from Mrs. Barnes in Massachusetts;  
answered it; made appointment for Wednesday.  
AFD

9/11—Began preparation of assignment of errors.

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58

9/12—Long conference in the office with Mrs. Barnes—2  
hrs. AFD

9/13—Working on assignment of errors.

9/13—Long conference with Mrs. Barnes; discussion of  
opinion of Judge Woolsey; spent the evening ex-  
amining Copyright Law and decisions thereunder.  
AFD

9/14—Long conference with Mrs. Barnes. O'B  
Conference in the office with Mrs. Barnes; con-  
ferred with Mr. Rosenbloom; working on assign-  
ment of errors. AFD

59

9/19—Wrote letter to Fulton Brylawski in Washington  
and letter to Mrs. Barnes. AFD  
Letter to Mrs. Barnes.

9/20—Prepared petition for appeal; copied assignment  
of errors. SGR

9/22—Assignment of errors filed. Citation issued. Re-  
turnable Oct. 20. Petition for appeal filed.

9/25—Conference with Mr. Sheldon at his home. AFD

9/28—Undertaking submitted and approved.  
Sent Mrs. Barnes bond application and indemnity  
agreements. AFD

10/3—Served assignment of errors, citation of appeal,  
petition for appeal and undertaking with notice of  
filing.

360

10/8—Received letter from Mr. Sheldon; answered it.  
AFD

10/17—Prepared stipulation extending return of citation  
to November 19. EJC

10/20—Citation returnable. Stipulation signed and order  
filed extending time to complete appeal to No-  
vember 20.

10/24—Received letter from Mr. Barnes; replied to same.  
AFD

11/2—Conference with Mrs. Barnes over telephone; con-  
ference with Mrs. Barnes in the office. AFD

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3361

- 11/3—Letter to West Publishing Company; letter to Miss Alice Kauser enclosing copy of Judge Woolsey's opinion. AFD
- 11/9—Conference with Mrs. Barnes over telephone; letter to Mrs. Barnes. AFD
- 11/10—Long conference with Mrs. Barnes in the office. AFD
- 11/19—Spent large part of the day working in the library on brief. AFD
- 11/20—Stipulation and order signed and filed extending time to complete appeal to Dec. 19.
- 12/5—At Bar Association all day working on brief. AFD
- 12/19—Stipulation signed and order signed and filed extending time to complete appeal to Jan. 19, 1935.
- 12/28—In Chicago—conference with Mr. Driscoll and Mr. and Mrs. Barnes at their home regarding proposed appeal. O'B

3362

## 1935

- 1/3—Examined letter from Mrs. Barnes; conferred with Mr. Driscoll regarding same; dictated and sent answer to Mrs. Barnes. O'B
- 1/4—Spent practically all afternoon working on brief. AFD
- 1/18—Stipulation signed and order signed and filed, extending time to complete appeal to Feb. 19.
- 1/22—Letter to Mrs. Barnes. O'B
- 1/25—Telephoned to Judge Knox; talked with his law secretary as to procedure. BP
- 2/19—Stipulation signed and order signed and filed extending time to complete appeal to March 19th.
- 2/21—At the Bar Association all afternoon working on brief. AFD
- 3/4—Spent all afternoon at Bar Association. AFD
- 3/5—Spent all day at Bar Association working on brief. AFD

3363



*Schedule as to Services Rendered, Annexed to  
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3364

3/19—Stipulation signed and order signed and filed extending time to complete appeal to April 19.

4/1—Letter to Nathan Burkan re stipulation and extra copies of transcript of case on appeal. EJC

4/19—Stipulation signed and order signed and filed extending time to complete appeal to May 19.

4/20—Letter to Mrs. Barnes advising that this matter will probably go over to October. AFD

4/24—Letter to Mrs. Barnes. O'B

5/10—Telephone conference with Mrs. Barnes. AFD

5/19—Stipulation signed and order signed and filed extending time to complete appeal to June 20th.

3365

6/20—Stipulation signed and order signed and filed extending time to complete appeal to July 20th.

Letter to Mr. Sheldon explaining delay in appeal of this matter. AFD

7/9—Original record on appeal submitted to Clerk for signature of Judge Woolsey.

7/17—Spent large part of day working on brief. AFD

7/18—Spent large part of day working on brief. AFD

7/19—Stipulation signed and order filed and signed extending time to complete appeal to August 20.

Worked on revision of LETTY LYNTON brief, better part of the day. AFD

3366

7/22—Worked on revision of brief all day Monday. O'B

7/23—Worked on revision of brief 1/2 day. O'B

7/29—Spent most of the day working on brief. AFD

7/31—Spent entire day working on brief and in the evening. AFD

8/1—Spent all day working on brief. AFD

8/19—Record on appeal filed.

9/3—Worked on brief until 11:00 P. M. AFD

9/4—At Bar Association working on brief all day. AFD

9/6—Redrew brief for printer. AFD

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9/9—Stipulation filed extending time to serve appellants' brief to Sept. 19.

9/13—Working on brief all day. AFD

9/14—Telephone call from Mrs. Barnes; Mrs. Barnes called and had conference with her. AFD

9/17—All day revising proof of brief; returned to printer for another proof; letter to Mr. Sheldon enclosing proof of brief; letter to Mrs. Barnes enclosing proof of brief. AFD

9/19—Spent considerable portion of day revision brief. Letter to Mrs. Barnes enclosing copy of second proof of brief. AFD

Stipulation signed extending time to serve and file appellants' brief to Sept. 23.

3368

9/20—Served appellants' brief on all parties.

9/23—Filed 13 copies of appellants' brief.

10/15—Stipulation signed extending respondents' time to serve and file brief to Oct. 22.

10/18—Received 3 copies of respondents' brief and examined same.

10/24—Letter to Mr. Sheldon; letter to Mrs. Barnes that appeal will be heard next week. AFD

10/26—Letter to Mr. Sheldon advising that case will be argued week of Nov. 3; letter to Mrs. Barnes. AFD

10/29—Letter to Mrs. Barnes.

3369

11/3—Letter to Mrs. Barnes. AFD

11/6—Telegram to Mr. Sheldon. AFD

11/7—Case appeared on Circuit Court calendar; adjourned to Nov. 8.

11/8—Case passed to Nov. 12.

11/11—Telephone conference with Mr. Frohlich. AFD

11/12—In court; appeal on calendar, passed for the day. AFD

Sent telegram to Mr. Sheldon and Mrs. Barnes. AFD

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11/13—In court; appeal on calendar; not reached. AFD  
11/14—Argued appeal in Circuit Court of Appeals; letter  
to Mrs. Barnes reporting on same and letter to  
Mr. Sheldon AFD.POB

12/2—Received call from Mr. Roberts of the Circuit Court  
of Appeals requesting that LETTY LYNTON be  
screened for the Court Tuesday; telephoned Mr.  
Burkan in regard thereto; had further talks with  
Mr. Roberts and with Mr. Frohlich. AFD

3371

12/3—Attended at Circuit Court of Appeals with attor-  
neys on both sides and the judges and their secre-  
taries; went to the City Hall Theatre across the  
street from the Post Office Building, and witnessed  
the showing of LETTY LYNTON; letter to Mr. Sheldon  
advising that screening of LETTY LYNTON was had;  
letter to Mrs. Barnes to the same effect. AFD

1936

3372

1/17—Received decision from Circuit Court of Appeals;  
examined decision; conference of all the attorneys  
in the office; telephone conference with Mrs. Barnes  
in Chicago; telephone conference with Mrs.  
Malevinsky. Went to Mr. Sheldon's apartment  
with Mr. O'Brien and read opinion to him. Wrote  
letter to Mrs. Barnes enclosing copy of Judge  
Hand's opinion; telegram to Mr. Sheldon. AFD

1/20—Conference with Mr. Driscoll relative to procedure  
to be followed in connection with entry of order  
based on decision of Circuit Court of Appeals  
(Judge Hand) and other matters. O'B  
Looking up law, most of the day. EJC  
Trip to Circuit Court of Appeals re taxing costs  
and other matters. SGR

1/24—Petition for rehearing filed.

1/25—Conference with Mr. Driscoll. O'B  
In library all day studying Section 25 of the Copy-

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3373

right Law; Long letter to Mrs. Barnes commenting on Judge Hand's opinion. AFD

Spent all morning on question of damages. EJC

1/28—All day on examination of law of various states and other damage questions. EJC

1/29—Spent all morning working on law. EJC

Long letter to Mrs. Barnes. AFD

1/30—Drafted interlocutory decree. EJC

2/3—Letter to Mr. Cecil Barnes; letter to Mrs. Barnes. AFD

2/4—Wrote letter to Mrs. Barnes re latest developments. AFD

3374

2/6—Received notice from Circuit Court that petition for rehearing was denied.

2/8—Received notice from Clerk of District Court that mandate of Circuit Court of Appeals had been filed. Prepared interlocutory decree in final form and had same served. EJC

2/11—Settlement of interlocutory decree adjourned to Feb. 14. Letter to Secty of State re state of incorporation of MGM

2/13—Received order with notice of entry recalling mandate pending application for writ of certiorari. Prepared and dictated bill of costs. EJC

2/14—Interlocutory decree submitted for signature.

3375

Letter to Mr. Sheldon and Mrs. Barnes re developments. AFD

3/9—Letter to Mrs. Barnes. O'B

3/26—Prepared papers in motion to vacate stay.

3/31—Served notice of motion returnable April 6 to vacate stay (Circuit Court).

4/4—Received copy of petition for writ of certiorari and notice of filing of same.

4/6—Withdrew motion to vacate stay.

4/10—Signed consent to filing of brief amici curiae.



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376

4/8—Conference with Mr. Driscoll and Mr. Raftery in re petition for writ of certiorari; read carefully the moving papers on part of petitioner and forwarded copies of same with letter to Mrs. Barnes. O'B

4/13—Long memorandum to Mr. Clarke re application for writ of certiorari by Metro. AFD

4/16—Worked on brief practically all day. EJC  
Letter to Mr. Sheldon; letter to Mrs. Barnes re petition for writ of certiorari. AFD

4/17—Worked on brief to Supreme Court with Mr. Clarke. SGR

377

Entire day spent at Bar Association looking up English law. SGR

Working on brief, all day. EJC

4/18—Examined draft of reply brief to the petition to the United States Supreme Court and had long conference with Mr. Clarke regarding same. Examined opinion of Mr. Justice Swan of U. S. Circuit Court of Appeals re "Captain January". Conferred with Mr. Clarke regarding same. O'B

4/21—Worked all evening at home on brief. AFD

378

4/22—Letter to Clerk of U. S. Supreme Court enclosing check for \$5. for filing of respondents' brief. Prepared proof of service on attorney for appellants. EJC

Forwarded copies of answering brief in re petition to U. S. Supreme Court by Metro-Goldwyn-Mayer and others to Mrs. Barnes; also copy to Mr. Sheldon. O'B

5/4—Telephone conference with Mr. Keough. Received telegram from Clerk of Supreme Court that petition for certiorari had been denied; communicated with Dr. Myerson; letter to Mrs. Malevinsky. Telegram to Mrs. Barnes and Mr. Sheldon; letter to Mr. Barnes. AFD

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5/5—Long letter to Mrs. Barnes advising her of present procedure. AFD

5/7—Visited Mr. Sheldon's home and conferred with him. AFD

5/8—Prepared decree. EJC

5/14—Long conference with Mrs. Barnes in the office. AFD

Served interlocutory decree with notice of settlement returnable May 16 before Judge Woolsey.

5/15—Conference with Mrs. Barnes. O'B

5/16—Settlement of decree adjourned to May 20.

5/20—Conference in my office with Mr. X regarding proposal of adjustment of case; informed Mr. Driscoll and Mr. Raftery of this information. O'B  
Received cross decree and memorandum in support thereof. Decree submitted for signature.

3380

5/21—Received order to show cause returnable May 22 for rehearing in District Court.

5/22—Motion denied from Bench with leave to renew before Circuit Court.

Attended on motion re settlement of decree and striking out three defendants; referred by Judge Goddard to Judge Woolsey; argued before Judge Woolsey until 1:30. AFD

5/25—Received order with notice of settlement returnable May 26.

3381

5/26—No cross order submitted.

5/27—Received order with notice of entry.

Letter to Mr. Sheldon enclosing copy of letter from Judge Woolsey to the effect that he has withdrawn from further connection with the case; copy of Judge Woolsey's letter to Mrs. Barnes. AFD

5/28—Received order to show cause returnable June 1 in Circuit Court for rehearing of appeal. AFD

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- 5/29—With Mr. Clarke prepared answer to petition; prepared memorandum on behalf of complainants in opposition to petition returnable before the Circuit Court of Appeals; spent considerable time looking up law; occupied most of the day on the matter: AFD
- 6/1—Conf. Mr. X re proposed settlement; letter to Mr. X. O'B
- 6/1—Argued motion in Circuit Court of Appeals. Denied from the Bench. Returned to office and prepared decree with notice of settlement. Served decree with notice of settlement returnable June 3. AFD With Mr. Driscoll occupied 2 hours redrawing decree. EJC
- 6/2—Received cross decree.  
Dictated detailed report to Mr. Sheldon and Mrs. Barnes jointly re letter received from Judge Woolsey withdrawing from case, and motion before Circuit Court on June 1st. Drew memorandum submitted by complainants upon the settlement of the interlocutory decree. AFD
- 6/3—Submitted proposed decree for signature.
- 6/9—Letter to Mrs. Barnes; letter to Mr. Sheldon; re-wrote letter to Mr. Sheldon. AFD
- 6/10—Conference with Mr. X in my office regarding proposed adjustment of litigation. O'B
- 6/11—Letter to Mrs. Barnes. AFD
- 6/17—Letter to Mrs. Barnes making appointment of June 25. AFD
- 6/25—Long conference in the office. Mr. and Mrs. Barnes, Mr. O'Brien and Mr. Driscoll.  
Prepared notice to appoint new attorney and served it upon Loew's and Culver.
- 6/26—Conference with motion picture expert re cost of negative. AFD

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3385

6/30—Made copies of statement of gross rentals of LETTY LYNTON by Miller, Donaldson & Co.; C. P. A. AFD

7/24—Attended before Judge Knox with Milton Rosenbloom; after conference worked on revising of decree. AFD

Received notice of appointment of Leopold Friedman as attorney for Loew's, Inc. Received notice of appointment of Samuel D. Cohen as attorney for Culver Export Corporation.

7/27—At the Bar Association for one hour looking up law. P.O.B.

Served decree with notice of settlement returnable July 29.

3386

7/28—Received cross decree.

7/29—Submitted decree.

Sent Mrs. Barnes and Mr. Sheldon memorandum re July 24th appearance before Judge Knox. AFD

7/30—Received letter from Fidelity & Deposit Co. of Maryland; wrote them re termination of appeal bond. AFD

7/31—Letter to Mr. Sheldon. AFD

8/3—Law Journal reported decree signed.

8/5—Served decree with notice of entry on attorneys for defendants.

8/12—Memorandum for Mr. Sheldon and Mrs. Barnes enclosing copy of decree made by Judge Knox. AFD

3387

8/13—Telephone conference with Mr. Auchincloss' secretary; letter to Mr. Auchincloss enclosing copy of order with notice of entry made by Judge Knox; memo to Mr. Sheldon and Mrs. Barnes advising that I have been in communication with office of Mr. Auchincloss. Special Master. AFD

8/20—Memorandum to M. M. Rosenbloom to prepare memorandum of law on procedure in this matter. AFD

8/24—Served decree with notice of entry on Special Master, Mr. Auchincloss.

Procured certified copy of decree. SGR



*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3388

8/26—Received letter from Mr. Auchincloss; making appointment for Thursday; conference with Mr. Clarke and Milton M. Rosenbloom re method of procedure; examined several cases and discussed same. AFD

8/27—Visited the office of Gordon Auchincloss; discussed hearings; memorandum to Mr. Sheldon and Mrs. Barnes re hearing on Sept. 9th. AFD

9/1—Prepared memorandum re procedure to be followed in proving accounting before Special Master in copyright infringement action. MMR

3389

9/5—Memorandum to Mr. Clarke. AFD

9/8—First hearing before Special Master. AFD

9/9—Memorandum to Mr. Sheldon and Mrs. Barnes reporting on hearing; letter to Mr. Sheldon. AFD  
Memorandum to Mr. Driscoll re provision in Securities Act for securing name of subsidiaries of Loew's Inc. P.O.B.

9/11—Letter to Mr. Sheldon re developments. Memorandum to S. G. Rosenbloom. AFD

9/14—Conference in the office with Mr. and Mrs. Barnes. AFD

3390

9/15—Telephone conference with Mr. Cohen of Mr. Rubin's office; letter to J. Robert Rubin advising him to change motion date to the 22nd. AFD

9/16—Letter to Securities & Exchange Commission re cost of securing photostatic copy of registration statement of Loew's Inc.

Dictated memorandum. SGR

9/21—Letter to Securities and Exchange Commission re photostatic copies of exhibits on file with them. EJC

9/23—Conference with Mr. X. O'B

9/24—Conference with Mr. X; conferred with Mr. Driscoll. O'B

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3391

- 9/30—Memorandum to Cecil Barnes for his ideas re accounting. AFD
- 10/3—Letter to Mrs. Barnes re trial of this case.
- 10/5—Telephone conference with Mr. Cohen. AFD
- 10/6—Memorandum to Mr. O'Brien. AFD
- 10/6—Conference with Mr. X regarding appointment with J. Robert Rubin; communicated by telephone with Mr. Rubin; made appointment to discuss settlement. O'B
- 10/8—Letter to Mr. Sheldon. AFD  
Telephone conference with Mr. Rubin. O'B
- 10/13—Conference with Miss Browning, secretary to Mr. Rubin, regarding postponement of appointment with Mr. Rubin from 11:00 until 2:45. In conference with Mr. Raftery from 2:45 to 4:15 P. M. Reported long conference with him to Mr. Driscoll and Mr. Raftery. Long conference Mr. Driscoll, Mr. Raftery and Mr. O'Brien in preparation of letter to be sent to J. Robert Rubin by Mr. O'Brien requesting details of statement of specific expenses and receipts mentioned in letter. O'B
- 10/14—Drafted letter to J. Robert Rubin re accounting (5 pages); long memorandum to complainants attaching copy of Mr. Rubin's letter. O'B
- 10/20—Received accounting in debtor-creditor form.
- 10/21—Attended hearing in the office of the Special Master with Mr. Clarke and Mr. Rosenbloom; dictated memorandum reporting on hearing; sent copies to Mr. Sheldon and Mrs. Barnes, together with copies of accounting. Sent letter to expert enclosing copy of account. AFD
- Attended with Mr. Driscoll and Mr. Clarke before Special Master Auchincloss at 50 Broadway; hearing adjourned to Nov. 5 at 10:30. SGR
- 10/22—Telephone conference. AFD

3392

3393

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

- 10/23—Conference with Mr. X over the telephone; had forwarded to Mr. X photostatic copy of receipts and expenditures of motion picture LETTY LYNTON and also copy of affidavit of Mills filed in connection with preliminary injunction. O'B
- 11/5—Hearing adjourned to November 6.  
Telephone conference with Mr. Cohen of Metro. ECR
- 11/6—Hearing adjourned to November 19.
- 11/11—Telephone conference with Mr. Cohen of Metro. ECR
- 11/19—Conference with Mr. Clarke re LETTY LYNTON. Mr. Clarke and Mr. Raftery spent considerable time in preparation for hearing. ECR  
Hearing adjourned to November 20th.
- 11/20—All morning at hearing before Special Master. ECR
- 12/2—All morning at hearing before Special Master. ECR and EJC
- 12/10—Hearing adjourned to December 11.
- 12/11—All morning at hearing before Special Master; completed complainants' case and rested. ECR
- 12/14—Telephone conference; conferred with Mr. Paul O'Brien re same. ECR
- 12/15—Mr. Paul O'Brien and Miss Monahan attended at Metro's office to take extracts from foreign contracts; occupied 2 hrs. PO'B
- 12/16—Attended at Metro-Goldwyn's office for 2½ hrs. examining foreign contracts and making digests and schedule. PO'B
- 12/16—Long telephone conference with Mr. J. Robert Rubin relative to proposed settlement and urging us to submit a figure on behalf of plaintiffs. Prepared and sent letter to Mrs. Barnes regarding this matter; also communicated with Mr. Driscoll who was in hospital. Conferred with Mr. Raftery. O'B

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll*

3397

- 12/18—Hearing adjourned to January 5, 1937.  
12/20—Worked on schedule of foreign distribution. PO'B  
12/23—Telephone conference with Mr. Cohen; letter to Mr.  
Driscoll regarding same. ECR

1937

- 1/6—Hearing adjourned to January 13.  
1/13—Hearing adjourned to February 1.  
1/15—Long conference with Mrs. Barnes at this office.  
ECR  
Telephone conference with Mrs. Barnes. Long conference with her in the office re accounting proceeding. AFD  
1/16—Long conference with Mrs. Barnes and Mr. Driscoll; telephone conference with J. Robert Rubin. ECR  
1/19—Went to Mr. Sheldon's apartment and conferred with Mr. Sheldon and Mrs. Barnes re accounting proceeding. AFD  
1/20—Long conference with Mr. and Mrs. Barnes and Mr. Driscoll. ECR  
Conference with Mr. and Mrs. Barnes and Mr. Driscoll. O'B  
1/21—Long conference with Mr. Prager; spent most of the day working in the library on law. AFD  
1/22—Conference with Mr. Cohen over telephone; working in the library nearly all day; long memorandum to Mr. Sheldon and Mrs. Barnes reporting on conference with Mr. Cohen. AFD  
1/25—Examination of law on accounting profits, etc. SGR  
Conference with Mr. Cohen and Mr. Rubin at Mr. Rubin's office from 4:00 to 6:00. AFD  
1/26—In conference with Sam Cohen of Metro and Mr. Driscoll at this office. ECR  
Conference with Mr. Cohen in the office. Redrew part of stipulation. Prepared memorandum to Mr.

3398

3399



*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

Sheldon and Mrs. Barnes re interview with Messrs. Rubin and Cohen. AFD

Long conference with Mr. Driscoll regarding his conference with J. Robert Rubin, general counsel for the defendants. Conference with Sam Cohen of Legal Department of Metro at our office. O'B

1/27—Long conference with Mr. Driscoll and Sam Cohen. ECR

Conference most of the afternoon with Mr. Cohen at this office. AFD

1/28—Two telephone conferences with Mr. Cohen; letter to Mr. Gordon Auchincloss, Special Master, to resume hearings immediately; copy to J. Robert Rubin. Memorandum to Mr. Sheldon and Mr. Barnes re postponement of trip to California. AFD

1/29—Telephone conference with Mr. Cohen; long conference in the office with Mr. Cohen. Telegram to Mr. Barnes re postponement of trip to California; telephone conference with Mr. Prager. AFD

Rec'd notice of motion returnable Feb. 1, 1937 to have commission issue for the taking of testimony in California.

1/30—Telephone call from Mrs. Barnes followed by conference in the office with Mr. and Mrs. Barnes; telephone conference with Mr. Cohen of Metro; followed by long conference in the office lasting practically all afternoon. AFD

2/1—Hearing before Special Master. Arranged to take depositions March 1st. AFD

2/2—Telephone conference with Mr. Auchincloss. AFD

2/5—Order entered on stipulation for the taking of depositions in California; depositions to start March 1st.

2/6—Telephone conference with Mr. Cohen. AFD

*Schedule as to Services Rendered, Amended to  
Affidavit of Arthur F. Driscoll.*

3403

- 2/8—Memorandum to Mrs. Barnes and Mr. Sheldon re trip to California; memorandum to Miss McMahon re tickets. AFD
- 2/11—Memorandum to Mr. Sheldon and Mrs. Barnes with copy to Mr. O'Brien; letter to Mr. Prager re trip to California. AFD
- 2/19—Two telephone calls with Miss Z. Miss Z called; long conference with her in my office. AFD
- 2/23—Conference with Mr. Clancy of Mr. Auchincloss' office over the telephone; conference with Walter Pollak, special counsel for Metra. Letter to Mr. X enclosing amended accounts asking for his suggestions. AFD
- 2/25—Conference in the office with Mrs. Barnes; left for California to take depositions in re accounts. AFD

3404

**CALIFORNIA TRIP**

to Left New York Thursday, Feb. 25, accompanied by Max Prager, accountant. Reached Los Angeles, Sunday, Feb. 28; began hearings before Special Master Auchincloss at the Studio of Metro-Goldwyn-Mayer, Monday,

- 3/15—March 1st. Hearings held March 1, 2, 3, 4, 5 and 6 and all day and evening of the 8th. On Tuesday, March 9 completed hearings and started back to New York with Mr. Prager. On Friday, March 12, between trains in Chicago saw Mr. and Mrs. Barnes at breakfast and reported to them fully on the matter. AFD

3405

- 3/8—Prepared and sent telegram to Mr. Driscoll in California. O'B
- 3/9—Letter to Mr. Sheldon and forwarded copy of same to Mrs. Barnes. O'B
- 3/15—Telephone conference with Mr. Sheldon; reported to him on Los Angeles Trip; telephone conference with Mr. Cohen of the Rubin office. AFD

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3406

- 3/16—Working in library on this matter.  
3/17—Working in library; dictated memorandum re references to changes made by complainants in the amended account of MGM Pictures Corp. (20 pages). AFD

3/18—Letter to Mr. Sheldon re developments. AFD

3/19—Conference with Mr. Sheldon at his home; reported to him developments in California; telephone conference with Mr. Prager; spent large part of day working on account. AFD

3407

3/22—Telephone conference with Mr. Auchincloss; telephone conference with Mr. Cohen; spent large part of day working on account. AFD

3/23—Telephone conference with Mr. Cohen; memo to Mr. Sheldon and Mrs. Barnes. AFD

3/25—Telephone conference with Mr. Cohen; letter to Mr. Auchincloss re resuming hearings. AFD

3/31—Letter to J. Robert Rubin enclosing statement of information required at hearing and made copy of statement. EJC

4/6—Phone from Mr. Pollak requesting that hearings be adjourned from April 12th to April 19th. AFD

4/9—Letter to Max Prager that hearings have been postponed. AFD

3408

4/16—Memorandum to Milton M. Rosenbloom. AFD

4/20—Attended hearing all morning accompanied by Mr. Clarke and Mr. Prager. AFD

Prepared memorandum re testimony of Mills, etc. by Mr. Prager. EJC

4/21—Attended hearing before Special Master with Mr. Clarke and Mr. Prager; memorandum to Mrs. Barnes and Mr. Sheldon. AFD

4/22—Telephone conference with Mr. Pollak. AFD

4/23—Attended hearing before Special Master, Mr. Clarke and Mr. Prager. Memo to Mr. Sheldon and Mrs.

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3409

Barnes re hearing. AFD

Letter to Mr. Sheldon. AFD

5/4—Received letter from Special Master; conference in the office with Mr. Prager all afternoon preparing for hearing next day. AFD

5/5—Attended hearing before Special Master with Mr. Clarke and Mr. Prager. AFD

5/6—Hearing before Special Master; spent rest of the day with Mr. Prager and Mr. Clarke; phone from Mr. Beatty, of counsel for defendants. AFD

5/7—Hearing before Special Master with Mr. Prager and Mr. Clarke; returned to office and all spent rest of day on case. Memorandum to Mr. Sheldon and Mrs. Barnes re hearings. AFD

3410

5/10—Received call from Mr. Auchincloss informing me of further request to adjourn hearing. AFD

5/11—Memorandum to Mrs. Barnes and Mr. Sheldon. AFD

5/12—Conference with Mr. Prager in the office. AFD

5/14—Long conference with Mr. Prager in the office preparing for hearing. AFD

5/17—Conference with Mr. Clarke and Mr. Prager; attended hearing at Special Master's office all morning; with Mr. Clarke and Mr. Prager all afternoon discussing various phases of the matter. AFD

3411

5/18—Conference in the office with Mrs. Barnes. AFD

5/19—Two telephone conferences with Mr. Cohen of Metro. AFD

5/24—Attended hearing before Special Master Auchincloss; spent the rest of the day with Mr. Prager working on matter; prepared memorandum to Mrs. Barnes and Mr. Sheldon. AFD

5/25—Worked with Mr. Prager on accounts for about 2 hrs. Memorandum to Mr. Clarke and M. M. Rosenbloom re Loew's as a tortfeasor. Letter to Mrs. Barnes and Mr. Sheldon. AFD



*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3412

- 5/26—Looked up law, all morning. AFD  
5/27—Revised brief; two telephone conferences with Mr. Pollak. AFD  
5/28—Worked on brief; all day. AFD  
6/2—Telephone conference with Mr. Pollak. AFD  
6/3—Telephone conference with Mr. Auchincloss and Mr. Cohen. AFD  
6/4—Telephone conference with Mr. Auchincloss. Telephone conference with Mr. Pollak and Mr. Cohen. AFD

3413

- 6/9—Conference in the office—Mr. Driscoll, Mr. Raftery, Mr. Cohen and Mr. Mills; telephone conference with Mr. Pollak over telephone with Mr. Clancy of Mr. Auchincloss' office. AFD  
6/10—Telephone conference with Mr. Auchincloss; letter to Max Prager re hearings. Telephone conference with S. D. Cohen. AFD  
6/11—Conference with Mr. Pollak over telephone. AFD  
6/15—Telephone conference with Mr. Clancy of Mr. Auchincloss' office. AFD  
6/16—Attended hearings before Special Master. AFD  
6/17—Conference in the office with Mr. and Mrs. Barnes. AFD

3414

- 6/18—Conference with Mr. Pollak over telephone; conference with Mr. Cohen. AFD  
6/25—Worked with Mr. Prager on preparation of brief. AFD  
6/28—Hearing before Referee with Mr. Clarke and Mrs. Prager; telephone conference with Mr. Prager. AFD  
6/29—Working all day with Mr. Clarke and Mr. Prager on brief. AFD  
6/30—Worked all morning with Mr. Clarke and Mr. Prager on brief; attended hearing in the afternoon, lasted until after 6:30. AFD

*Schedule as to Services Rendered; Annexed to  
Affidavit of Arthur F. Driscoll.*

3415

7/1—Conference with Mr. Prager in the office; working with Mr. Prager and Mr. Clarke on account. Memo to Mrs. Barnes and Mr. Sheldon re hearings to date; continued with draft of brief. Telephone conference with S. D. Cohen. AFD

7/2—Telephone conference with Mr. Prager; telephone conference with Mr. Cohen; working with Mr. Prager and Mr. Clarke all day. AFD

7/6—Spent entire day on matter with Mr. Clarke and Mr. Prager. Hearings started at 10:00 A. M. at 50 Broadway; continued all morning; adjourned for lunch; continued after lunch; at four o'clock left the hearing room for 1540 Broadway for screening of the picture; screening completed about 6:00 o'clock. AFD

3416

7/7—All day with Mr. Prager and Mr. Clarke at Bar Association; long memorandum to Mrs. Barnes and Mr. Sheldon re developments; letter to Mr. Auchincloss citing cases; copy to Mr. Cohen and Mr. Pollak; continued with draft of brief. AFD

7/8—All day working on brief at Bar Association. AFD

7/9—Attended at hearing with Mr. Clarke and Mr. Prager at Mr. Auchincloss' office; continued work on draft of brief. AFD

3417

7/12—Drew memorandum re foreign subsidiaries. EJC

7/14—Working on draft of brief. AFD

7/15—Telephone conference with Mr. Cohen; working all day on brief with Mr. Prager. AFD

7/16—Working on draft of brief; memorandum to Mrs. Barnes and Mr. Sheldon. AFD

7/26—Completed and served brief, findings and corrected account; received defendants' brief and findings; took them home and spent the evening examining them. AFD

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

7/27—Worked in library all day with Mr. Prager; 2 telephone calls from Mr. Auchincloss; 1 telephone conference with Mr. Cohen of Metro; drafting reply memorandum. AFD

7/28—Worked on reply brief. AFD

Worked on brief. EJC

7/29—Letter to Mrs. Barnes enclosing copy of brief and accounting; drafted reply brief. AFD

8/2—Prepared draft of brief re Loew's liability for profits made by its subsidiaries on LETTY LYNTON. EJC

8/10—Working on brief; telephone conference with Mr. Sheldon; telephone conference with Sam Cohen. AFD

8/11—Attended hearing before Special Master, 10:00 to 1:00. Mr. Clarke and Mr. Prager also present. AFD

8/12—Two telephone conferences with Mr. Prager; memo to Mr. Sheldon and Mrs. Barnes reporting on recent hearing. AFD

7/16—Working on brief. AFD

8/17—Working on reply brief. AFD

8/18—Working on reply brief. AFD

8/19—Reading brief. AFD

8/20—Served reply brief. Received respondent's reply brief. AFD

8/23—Submitted complainants' reply brief.

8/24—Received by mail at my camp in Southwick defendants' reply brief; spent considerable time studying it. AFD

9/7—Letter to enclosing statements of Loew Theatres which played LETTY LYNTON asking comments; listed theatres. ECR

9/21—Telephone conference with Mr. Cohen asking for an adjournment of the hearings set for this week; after considerable discussion consented to adjourn them. AFD

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3421

9/22—Telephone conference with S. D. Cohen. AFD

9/27—Telegram to Mrs. Barnes making appointment for Thursday. AFD

9/28—Telephone conference with Sam Cohen. AFD

9/30—Hearing<sup>o</sup> before Referee Auchincloss; attended by Mr. Barnes, Mr. Prager, Mr. Clarke and AFD  
Conference with Mr. and Mrs. Barnes in the office later in the day; conference with Mr. Prager in the office. AFD

Conference with Mr. and Mrs. Barnes; also conferred with Mr. Driscoll. O'B

10/1—Prepared memo to Edward Sheldon re latest hearing. AFD

3422

Conference with Mr. and Mrs. Barnes; also with Mr. Driscoll. ECR

10/2—Conference in the office with Mr. Prager. AFD

10/5—At hearing before Special Master with Mr. Clarke and Mr. Prager. AFD

10/6—Conferred with \_\_\_\_\_ over the telephone; conference with Mr. Driscoll. ECR

10/7—Telephone conference with \_\_\_\_\_; long conference at his office; conferred with Mr. Driscoll. ECR

Long memorandum to Mrs. Barnes and Mr. Sheldon re last hearing. AFD

3423

11/4—Phone from Mr. Clancy of Mr. Auchincloss' office informing me that Mr. Pollak would be unable to go on with the hearing Nov. 8; agreed to Nov. 19. AFD

11/9—Telephone conference with Mr. Auchincloss requesting that we compute the percentage of cost represented by various overhead charges. Conferred with Mr. Prager in regard thereto. Later in the day long conference with Mr. Prager and Mr. Clarke preparing statement to be submitted to Mr. Auchincloss. AFD



*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

- 11/10—Drafted letter to Mr. Auchincloss. AFD
- 11/11—Working on statement re overhead; conference with Mr. Clarke; telephone conference with Mr. Cohen; letter to Mr. Auchincloss with copy to Mr. Rubin, Leopold Friedman and Walter Pollak re defendants' filing of "Comparative Analysis of the Play and Picture, Trial and Play." Letter to Mr. Auchincloss enclosing our computation of labor and materials and total negative cost; letter to S. D. Cohen enclosing same. AFD
- 11/15—Prepared memorandum to Mrs. Barnes and Mr. Sheldon; made copies of my letter to Mr. Auchincloss re comparative analysis of play and picture, trial and play and Mr. Auchincloss' reply thereto. AFD
- 11/18—Long letter to Mr. Sheldon; telephone conference with Walter Pollak. AFD
- 11/19—Telephone conference with Mr. Auchincloss.
- 11/22—All day at hearing before Special Master with Mr. Prager and Mr. Clarke. AFD
- 11/23—Hearing all afternoon before Special Master with Mr. Prager and Mr. Clarke; returned to office and examined records and authorities. AFD
- 11/24—Hearing at Mr. Auchincloss' office all day; morning and afternoon. Dictated memorandum for Mr. Sheldon and Mrs. Barnes. AFD  
Attended hearing. EJC  
Letter to Mrs. Barnes. AFD
- 11/26—Hearing at Mr. Auchincloss' office; drafted letter to Special Master; revised same. AFD and EJC
- 11/27—Prepared long letter to Mr. Auchincloss in final form, with copies to Mr. Pollak, Leopold Friedman and J. Robert Rubin; revised memorandum on proposed allocation of production overhead. Memo to Mrs. Barnes and letter to Mr. Sheldon enclosing copy of letter to Mr. Auchincloss. AFD

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3427

11/30—Conference with Mr. Auchincloss over telephone; conference with Mr. Prager and Mr. Clarke in the office; prepared memorandum for the file. AFD

12/1—Conference with Mr. Prager. AFD

12/2—Revised 6 pages of memorandum (main brief); letter to Mr. Auchincloss enclosing same for substitution in his copy of main brief; sent copies to Mr. Rubin, Mr. Pollak and Mr. Friedman; also enclosing photostats showing recomputations of accounting of foreign subsidiaries. AFD

12/6—Working on case; phone from Mr. Auchincloss; conference with Mr. Prager. AFD

3428

12/7—Telephone conference with Mr. Auchincloss. AFD

12/8—Phone from Mr. Pollak's office requesting adjournment of hearing set for 9th. AFD

12/9—Three telephone conferences with Mr. Auchincloss; conferences with Mrs. Barnes and Mr. Prager in the office; answered certain questions asked by Mr. Auchincloss as to the record. AFD

12/10—Phone from Mr. Auchincloss for information in regard to certain parts of the account. Studied it out with Mr. Prager and telephoned Mr. Auchincloss. Dictated memo for the files. AFD

12/16—Attended hearing before Special Master with Mr. Clarke and Mr. Prager. AFD

3429

12/30—Two telephone conferences with Mr. Auchincloss; looked up certain information asked for by him and reported back to him. AFD

1938

1/3—Received phone from Mr. Auchincloss regarding overhead of Loew Theatres; began work with Mr. Clarke in estimating the overhead. AFD

1/4—Prepared long memorandum for Mr. Driscoll re procedure after filing of report by Special Master. MMR

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

Spent all day and until 11:00 o'clock in the evening working with Mr. Prager and Mr. Clarke in preparation of new schedules having to do with overhead on Loew Theatres; two telephone conferences with Mr. Auchincloss. AFD

1/5—Long conference with Mr. Prager in the office; long letter to Hon. Gordon Auchincloss enclosing certain schedules re Loew Theatres; sent copy to Mr. Rubin and Mr. Pollak. AFD

1/14—Four telephone conferences with Mr. Auchincloss; spent some time looking over records re overhead charges on foreign versions. Sent copy of memorandum of MMR re procedure re report to Mr. Auchincloss. AFD

1/17—Two telephone conferences with Mr. Auchincloss; two telephone conferences with Samuel D. Cohen. AFD

1/18—Three telephone conferences with Mr. Auchincloss; looked up information asked for by him and advised him of it. Long memorandum to Mrs. Barnes and Mr. Sheldon bringing them up to date on proceedings. AFD

1/19—Telephone conference with Mr. Auchincloss; secretary; gave him certain information that we had culled out of the record. AFD

1/24—Letter to Mr. Sheldon. AFD

1/26—Telephone conference with Mr. Cohen. Mr. Cohen sent to office new schedules re Loew Theatres; examined them and turned them over to Mr. Clarke for his examination. AFD

2/3—Telephone conference with Mr. Auchincloss. AFD

2/7—Conference at Mr. Auchincloss' office; accompanied by Mr. Clarke and Mr. Prager. AFD

2/8—Prepared memorandum for Mrs. Barnes and Mr. Sheldon. AFD

*Schedule as to Services Rendered, Annexed to  
Affidavit of Arthur F. Driscoll.*

3433

2/10—Conference with Mr. Prager and Mr. Clarke studying box office statements of vaudeville theatres, and preparing new schedules for Special Master. Dictated long letter to Mr. Auchincloss enclosing new schedules, with copy to Mr. Rubin and Mr. Pollak. AFD

2/11—Working with Mr. Prager and Mr. Clarke studying box office statements of vaudeville theatres; and preparing new schedules for Special Master. Dictated long letter to Mr. Auchincloss enclosing new schedules, with copy to Mr. Rubin and Mr. Pollak. AFD

2/14—Dictated further memorandum opposing defendants' proposal to divide all Loew profits in 101 theatres,  $\frac{1}{3}$  to vaudeville and  $\frac{2}{3}$  to LETTY LYNTON 15 pages. AFD

3434

2/15—Worked with Mr. Prager and Mr. Clarke re new schedules to be submitted to Special Master. Revised and redrew several pages of memorandum. AFD

2/16—Completed revision of memorandum (18. pages); sent same to Mr. Auchincloss with letter, and copies to Mr. Rubin and Mr. Pollak. AFD

2/18—Conference in the office with Mrs. Barnes. AFD

3/1—Telephone conference with Earle Beatty. AFD

3/10—Telephone conference with Mr. Auchincloss; memo for Mr. Clarke and Mr. Prager and M. M. Rosenbloom re hearing on March 16. AFD

3435

3/14—Telephone conference with Mr. Auchincloss asking for references to testimony in re Federal Tax. Telephoned Mr. Prager; asked him to examine minutes and report. AFD

3/15—Telephone conference with Mr. Auchincloss. AFD

3/16—Hearing before Special Master; attended by Mr. Driscoll, Mr. Clarke and Mr. Prager, 10:30 to 1:00. Letter to Mr. Pollak enclosing Milton Rosenbloom's



*Schedule as to Services Rendered, Annexed to  
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memorandum re procedure with regard to report of Special Master; memorandum to Mrs. Barnes and Mr. Sheldon reporting on hearing. AFD

3/21—Letter to Mr. Auchincloss re memorandum of defendants re Exhibit L-14 and testimony of Vogel. Letter to Mr. Barnes. AFD

4/1—Letter to Mr. Auchincloss protesting that 20 days is too long a time in which to file objections to draft report; copy to Mr. Pollak. AFD

4/7—Conference with Mr. Prager in the office; telephone conference with Mr. Prager; telephone conference with S. D. Cohen. AFD

4/8—Long conference with Mr. S. D. Cohen in the office; telephone conference with Mr. Auchincloss. AFD

4/11—Telephone conference with Mr. Auchincloss; telephone conference with Mr. Prager. AFD

4/14—Went to office at 8:00 A. M.; received copy of Special Master's report; telephoned Mrs. Barnes in Chicago; telephoned Mr. Sheldon. Spent several hours during the day reading the report. Cable to Mr. Raftery. Letter to Mrs. Barnes and Mr. Sheldon enclosing draft of Master's report. AFD  
Drafted objections to Master's report with Mr. Prager. EJC

4/15—Telephone conference with Mr. Auchincloss; with S. D. Cohen. AFD

4/18—Telephone conference with Mr. Prager; telephone conference with Mr. Pollak; telephone conference with Mr. Auchincloss. AFD

4/19—Received letter from Special Master extending time to file suggestions to May 2, 1938. AFD

4/21—Conference in the office with Mr. Prager. AFD

4/22—With Mr. Prager and Mr. Clarke worked on objections to report of Special Master, all morning. AFD

*Affidavit of Jesse T. Mills.*

4/25—With Mr. Prager and Mr. Clarke worked on objections to report of Special Master, all afternoon. 3439

AFD

4/29—Served objections and suggestions to draft report of Special Master.

5/2—Filed objections and suggestions to draft report of Special Master.

**Affidavit of Jesse T. Mills, Read in Opposition to Motion.**

3440

[SAME TITLE.]

State of New York,  
City of New York,  
County of New York—ss.:

JESSE T. MILLS, being duly sworn, deposes and says:

I am the Assistant-Secretary of Loew's Incorporated and submit this affidavit in behalf of the defendant Loew's Incorporated as well as in behalf of the other defendants in this action, in opposition to the plaintiffs' motion for attorneys' fees and in opposition to the plaintiffs' motion to confirm the report of the Special Master. 3441

**AS TO THE REPORT OF THE SPECIAL MASTER:**

The opposition of the defendants to the plaintiffs' motion to confirm the report of the Special Master and the grounds therefor are set forth in the exceptions which have been filed, which will be amplified by a brief to be submitted to the Court upon the argument of this motion.

*Affidavit of Jesse T. Milx.*

3442 AS TO THE FIXING OF A COUNSEL FEE TO BE ALLOWED  
TO THE ATTORNEYS FOR THE PLAINTIFFS:

The defendants have no objection to the fixation of a reasonable counsel fee, but the defendants object, and object strenuously, to the suggestion of the plaintiffs that the services of plaintiffs' counsel in this matter are reasonably worth \$135,000 or any sum approximating that amount. The reason for the defendants' objections will be set forth hereafter.

3443 The plaintiffs brought suit for an infringement of copyright, claiming that their play "Dishonored Lady" was infringed by the motion picture, "Letty Lynton," produced by the defendant Metro-Goldwyn Pictures Corporation and distributed by the defendant Metro-Goldwyn-Mayer Distributing Corporation.

The trial was had before Judge Woolsey and was a comparatively simple one, the trial lasting in its entirety one and a half days in New York and two days were taken up by oral argument before Judge Woolsey in Petersham, Mass.

3444 The only witnesses produced by the plaintiffs were one of the plaintiffs, Margaret Ayer Barnes, and J. Robert Rubin. Mr. Rubin's examination was very short. His entire examination, direct, cross and re-direct, is set forth on pages 19 to 34 of the case on appeal. The witnesses produced by the defendants were examined on written interrogatories, the only witnesses examined in New York orally being Harrison R. Steeves, an expert produced by the defendants, and Gabriel L. Hess, the general attorney for the Motion Picture Producers & Distributors of America, Inc. Mr. Hess' entire examination, direct, cross and re-direct, covers less than twelve pages of the printed case on appeal.

The trial resulted in a judgment dismissing the plaintiffs' complaint on the merits.

*Affidavit of Jesse T. Mills.*

After the dismissal, plaintiffs appealed to the Circuit Court of Appeals, which reversed the judgment of Judge Woolsey. The argument of the appeal took but the allotted time.

3145

The subject involved was a play which the plaintiffs offered to sell to the defendants for \$30,000 as a motion picture vehicle. The contract for the sale of the motion picture rights in "Dishonored Lady" contained this provision:

"Our assignments are therefore delivered to Mr. Bickerton with this understanding, which is that Metro, if it obtains this approval within thirty (30) days, will on its part then sign the contracts and pay Mr. Bickerton the Thirty Thousand Dollars (\$30,000) therein provided, but Metro is not obligated to take the rights unless in thirty (30) days it secures such approval of the Hays' Office, and if it does not so secure such approval then the contracts now signed by us and deposited with Mr. Bickerton will be returned to us by Mr. Bickerton."

3146

The consent of the Motion Picture Producers & Distributors of America, Inc. (the Hays' Office) was not forthcoming for the reason that the play "Dishonored Lady" was considered too lewd and lascivious to be produced in motion pictures.

3147

The motion picture "Letty Lynton" was based upon the novel "Letty Lynton" written by Marie Belloc Lowndes, which the defendant Metro-Goldwyn Pictures Corporation purchased. This novel was founded on the old Madeline Smith Trial in Glasgow, Scotland, in the year 1857, upon which trial plaintiffs' play likewise was based.

The Circuit Court of Appeals, nevertheless, felt that in writing the motion picture scenario, the writers were unable to divorce entirely from their minds the play which some of them had read or which one or more of



*Affidavit of Jesse T. Mills.*

3448 them had seen on the West Coast. As Judge Hand put it:

"With so many sources before them they might quite honestly forget what they took; nobody knows the origin of his inventions; memory and fancy merge even in adults."

Of the 600 odd items appearing in the schedule attached to the affidavit of Arthur E. Driscoll in support of his motion for an allowance of counsel fees, approximately 150 of them relate to the sending and receiving of letters, the making and receiving of telephone calls, and the sending and receiving of telegrams, 30 prior to the trial and about 120 after the trial. Many of the items relate to the mere signing of stipulations and clerical service with reference to the answering of calendars and the performance of duties with respect to calendar practice and the noticing of Law Journal decisions.

A dozen or more entries relate to letters received from and letters sent to a certain Mr. X and conferences with Mr. X, whose identity is undisclosed, and telephone talks with a Miss Z; whose identity likewise remains a mystery.

Many of the items prior to the trial relate to the preparation of affidavits, an order to show cause for an injunction pendente lite and voluminous briefs for use on the motion for a preliminary injunction, which the plaintiffs should have known, under the authorities, would not be granted in a case of this kind, where the facts were disputed. The motion for a temporary injunction was denied by Judge Goddard.

3450 A goodly number of the enumerated items have to do with the preparation of affidavits in opposition to a motion for a bill of particulars and the preparation of motion papers requiring defendants to answer certain interrogatories propounded by plaintiffs, which motion plaintiffs subsequently withdrew.

*Affidavit of Jesse T. Mills.*

After the appeal the only work that the defendants 3451  
 should reasonably be charged with is the preparation of a  
 memorandum in opposition to the defendants' motion for a  
 writ of certiorari to the Supreme Court of the United  
 States, which was denied. The plaintiffs' memorandum  
 consisted of 21 pages and the defendants' application con-  
 sisted of 25 pages.

In the main, the enumerated items are of the same  
 category as items of services rendered daily by law  
 offices in goods sold and delivered actions and in actions  
 generally based on contract violations and by and large it  
 can be safely asserted that neither the trial nor the appeal—  
 aside from the amount of profits found to have been earned 3452  
 by the Special Master—involved questions of law or of  
 fact more complicated than the general run of cases usually  
 encountered in a law office.

The travail which plaintiffs' counsel so graphically de-  
 scribe in their moving papers as having been experienced  
 by them during the conduct of the litigation, upon scrutiny,  
 will be found to be the run of the mill variety of vicissi-  
 tudes which lawyers engaged in court work have to cope  
 with daily.

After the appeal was decided in favor of the plaintiffs, an  
 order was entered appointing Gordon Auchincloss, Esq.,  
 Special Master.

Almost from the very beginning of the hearings before 3453  
 the Special Master the defendants, realizing the tremendous  
 task which they were called upon to meet in order to prove  
 their costs and receipts and a proper allocation thereof,  
 urged that their books of account and records be examined  
 by a reputable public accounting firm such as Price, Water-  
 house & Company, Touche, Nevin & Co. or Haskins & Sells.  
 This offer was consistently rejected by the plaintiffs who  
 insisted upon an examination of the defendants' books and  
 records by their own accountant, Mr. Max Prager. This  
 the defendants would not accede to. Thus we find at page

*Affidavit of Jesse T. Mills.*

3454 63 of the minutes adduced at the hearing before the Special Master in New York the following:

"Mr. Cohen: I would like to have this record indicate that we are ready and willing to have an accountant to come into our organization to examine our books and records, which cover tons of material. It is physically impossible to bring all the records down here at any session. I shall endeavor to bring down all the records we can at one time; but if they will designate an accountant of reputation and integrity who is recognized in the industry, who can produce a worth while accounting, we will be the first one to recognize him and use him.

3455

"Mr. Raftery: We are past making any offers of any kind. We now rest on the million dollars gross and we are going to ask you to go forward and make your proof."

The rejection of the defendants' offer to have the books and records examined by a reputable accounting firm necessitated the calling of many witnesses and the production of voluminous documents.

3456

It soon became apparent that even with this the defendants would be unable to prove the accounting in New York because of the many objections interposed by plaintiffs' counsel as to the competency of the proof adduced. Plaintiffs' counsel well knew that the motion picture was produced in California; that the books and records of original entry were kept in California, and that the persons who would be competent to testify with respect to the entries contained in the books and records were all stationed in California at the studios of the Metro-Goldwyn-Mayer Corporation. Thus we find plaintiffs' counsel objecting at page 25 of the testimony adduced before the Special Master in New York as follows:

"It (the accounting) is attacked. All we have to

*Affidavit of Jesse T. Mills.*

do is to object; he has to prove it. The statute so provides." 3457

And at page 54:

"Mr. Raftery: As to the production cost, Mr. Berry has no knowledge of it whatever other than what information was sent him from the Coast. The accountants at the Coast are the ones who made the items entered here. The only way I can cross-examine and find out about these overhead charges is to examine the same people whom you bring for these other hearings. They are the ones who kept them." 3458

And at pages 60 and 61:

"Mr. Raftery: Now, Mr. Special Master, we have been down here five times and we are going back to the original proposition that we reached on the first hearing. During the five meetings so far we finally succeeded in getting the gross sales. The gross sales as shown by the amended account of the Metro-Goldwyn Pictures Corporation, domestic sales, \$733,732.62; the gross sales in the foreign field shown in the last hearing amount to \$435,266.64, or a total of \$1,168,999.26. We accept both those figures as admissions against interest, and that is our prima facie case, and we rest on those totals, in accordance with section 25 of the Copyright Act which states that the plaintiff shall be required to prove sales only. Then the Act says that the defendant shall be required to prove every element of cost which he claims. So, therefore, instead of our worrying about figures or witnesses or accepting statements backed up only by totals or a slip of paper which a witness produces, we are going to 3459



*Affidavit of J. C. T. Mills.*

insist that the defendants come forward with competent evidence to prove their items of expense.

"Our damage as proven so far by their own records is \$1,168,999.26. Now, it is up to the defendants to go forward and prove their cost. If they have any deductions they must prove them and must prove them by competent evidence.

"That is the plaintiffs' or complainants' prima facie case of damage and amount of damage."

And at pages 62 and 63:

"By Mr. Cohen (examining Mr. Berry):

Q. You were to let us have some breakdown of some figures now at this hearing. You will recall you let us have the totals at the last hearing.

"Mr. Rafferty: We are going to object to evidence of this character as not the best evidence. It is not the proper way to prove the account.

"The Special Master: It may not be the best evidence, but if he wants to let him put it in.

"Mr. Rafferty: So that I may not interrupt Mr. Cohen in his examination, may I have a general objection to the whole line of testimony?

"The Special Master: You may reserve your right to object to its competency."

And at pages 68, 69, 70 and 71:

"Mr. Rafferty: I reserve my motion to strike out Mr. Berry's testimony as not the best evidence.

"The Special Master: May I ask counsel how they construe Equity Rule 62 with reference to the powers of a master, where it reads that the master has power also to direct the mode in which the

*Affidavit of Jesse T. Mills.*

matters requiring evidence shall be proved before him; what does that mean? 3463

"Mr. Cohen: I think you have the full power——

"Mr. Raftery: Subject to the statute——

"Mr. Clarke: I think the section of the Copyright Act is a special exception to the rule, in view of the fact that the accounting party has the burden of justifying his deductions.

"The Special Master: Frankly, the thing I am particularly interested in getting light on in this case is not the kind of charges that have just been read off by the accountant, which I suppose there is no question about; but the propriety of some of the other charges which bulk up into large amounts, retained by the foreign companies, and then, in the domestic operations, that large item. 3464

"I don't see how in the world I am ever going to get any information on that unless I have the advice of someone who has examined these books, that I can have complete confidence in, who will tell me his opinion with reference to the propriety of these charges. Now, have I got any right to designate an accountant of my own to assist me in this thing, to present these matters to me?"

"Mr. Cohen: Before your Honor debates that may I say this? I intend to present at subsequent hearings our own accountants, Miller, Donaldson & Co., people who have made an examination and audit of our books and who are authorities on motion picture accounting. Of course, they will testify, not so much as advocates of the defendants, but as experts in their profession. 3465

"We expect to have Mr. Craig, the accountant at the studio, here to testify from the standpoint of the Metro-Goldwyn Pictures Corporation and from the standpoint of the Culver Export Corporation, in an endeavor to justify all of the items which appear

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in the accounting; but Miller, Donaldson & Co. can testify not only from what they observed in the studios in the examination of our books, but also as writers on the subject, and people who are well versed in the accounting field, in so far as it pertains to motion pictures, and that will be fortified, I dare say, by other certified public accountants who are well recognized.

"Mr. Raftery: We are not interested in opinion evidence of any character. We are interested in one thing, the actual cost. All you are entitled to prove is actual cost.

"Miller, Donaldson & Co. are your paid employees who audit your books regularly and who do all your work. I am not going to tell you whether to bring them or not to bring them, but the only thing we are interested in here is actual cost. That means, actual cost of production, and not fictitious cost.

"Mr. Cohen: Mr. Special Master, I just want to give you an idea of what papers are involved. These reports (producing bundle of papers) refer to one foreign country relating to the picture 'Lettie Lynton'. There are approximately 1500 like bundles.

"Mr. Raftery: I am surprised there are so few.

"Mr. Cohen: That is of the Culver Export Corporation alone.

"The Special Master: You will have to go ahead."

And at pages 145 and 146:

"The Special Master: I do not see how you are, over the plaintiffs' objection going to prove your deductions by secondary evidence. I think, if they object to your secondary evidence, you have got to prove it by primary evidence. So far I do not see any proper evidence that has gone in here which will be valuable to me in passing on these de-

*Affidavit of Jesse T. Mills.*

ductions from the gross. We had an admitted gross of something over \$1,000,000 and then we have got an accountant's list of what you claim to be deductions, but we most certainly can't say that those items have been satisfactorily proved as proper deductions in this case. That is the way I feel about it. 3469

"I am not going to issue an order, over objection, for a general taking of depositions. You may go and get it from the Court, if you can. But that practice puts me in a position of trying this entire case by deposition. If that is done with the entire approval of both sides I will probably ask for instructions from the Court, but over the objection of one side I am not going to order it." 3470

Before long it ceased being debatable that because of the plaintiffs' objection to the evidence produced in New York, the only safe course to pursue was the taking of testimony in California as to the cost of producing the motion picture.

A motion was thereupon duly made before the Special Master, on affidavit and notice of motion, for the taking of the testimony of certain witnesses in California who would be in a position to give competent testimony with reference to the cost of producing the motion picture "Letty Lynton," and the following colloquy took place with reference to the said motion: 3471

"Mr. Cohen: What will your Honor do under the circumstances?"


"The Special Master: I will be glad to have your suggestions as to how to continue this case without delay.

"Mr. Cohen: My suggestion is my motion.

"The Special Master: That has been objected to. I am not going to order the taking of depositions three thousand miles away.



# MICRO CARD

TRADE MARK 

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*Affidavit of Jesse T. Mills.*

3472

"Mr. Cohen: How can we do it?

"The Special Master: That is your worry.

"Mr. Cohen: A way must be found in law and equity how best we can prove our case.

"The Special Master: It has either got to be proved here or on the Coast. I do not believe Mr. Driscoll is going to take the position that you can't prove this case on the Coast." (Page 146).

And at pages 148 and 149:

3473

"The Special Master: Irrespective of that, whether it has been solely the responsibility of one side or whether both sides have been responsible for the—I would not say, stalling; I will say, delay—whatever the reason for the delay was, I do not see any reason for the delay's continuing. Since I feel that way, and since I am unwilling to issue an order here whereby there will be depositions taken which will be practically the entire case, and since there is objection to that proceeding, you have either got to agree among yourselves to prove this case here, that means bringing on your witnesses such as he requires for the primary evidence—

"Mr. Cohen: As I require, you mean?

3474

"The Special Master: As he requires. You have got to bring on your witnesses.

"Mr. Cohen: He has got his gross. I have got to prove my deductions.

"The Special Master: If he is going to interpose objections on the ground that the evidence you have produced is not primary evidence, you have got to meet that objection by producing such proof as is not objectionable.

"Mr. Cohen: The purpose of asking for this order is to produce that primary evidence."

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As to the cost of the taking of the California testimony, 3475  
the only reference thereto in the record is the following:

"Mr. Driscoll: I had stipulated that if he would pay my car fare and hotel bills I would go out and take the depositions.

"Mr. Cohen: That is a reasonable request; we had agreed to it."

And at pages 150 and 151:

"The Special Master: Just a minute. I do not know whether I want to commit myself on this—or if Judge Knox tells me that he would prefer that I should go to California myself and take this testimony, I might consider doing that; but I am certainly not going to do it and impose a charge on this thing for my services—I mean, I practically have to do it on the basis of a vacation, that is practically what I would have to do it on. I mean, I do not think it would be fair to impose a charge for my time as Special Master. I would practically have to do it on the same basis Mr. Driscoll suggests. I am not so sure I want to do that." 3476

And at pages 152 and 153:

"The Special Master: I think you ought to let me know this afternoon whether this course of procedure will be followed or not, in other words, whether we are going to have these hearings in California or whether we are going to sit right here and do it here." 3477

"Mr. Cohen: We will have to have it held in California.

"The Special Master: Then, have your clients agreed on this proposition?"

*Affidavit of Jesse T. Mills.*

178 "Mr. Cohen: As to the expenses?

"The Special Master: The proposition to proceed in California, to proceed daily until completed, with the expenses of the Referee and the expenses of plaintiffs' counsel, that his accountant will be paid, and that approval of Judge Knox to the procedure will also be obtained.

"Mr. Cohen: As to counsel, we have agreed to pay expenses. As to his accountant, that is something different.

"Mr. Driscoll: Let us drop everything, then, and proceed with your case here.

179 "Mr. Cohen: Why drop it? We have a motion pending.

"The Special Master: Instead of depriving the Special Master of the opportunity to see the witnesses and have the testimony adduced before him in the usual course, we are going out to California."

Thereafter a written stipulation was entered into with plaintiffs' attorneys covering the taking of the testimony in California, as follows:

180 "IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties that the testimony of such witnesses as may be called by any party hereto shall be taken at the studios of defendant Metro-Goldwyn Pictures Corporation, Culver City, California, before the Special Master Gordon Auchincloss, beginning Monday, March 1, 1937, at 10:30 A. M. and continuing daily until completed, and to the end that such testimony may be procured as aforesaid the defendants stipulate and agree to pay to the complainants' counsel the sum of Eight Hundred Dollars (\$800.00) to cover plaintiffs' expenses in full in connection with the taking of such testimony, and further stipulate and agree

*Affidavit of Jesse T. Mills.*

to pay the reasonable expenses of Special Master Gordon Auchincloss in connection with the said taking of testimony. 3481

"IT IS FURTHER STIPULATED AND AGREED that the defendants shall furnish a competent stenographer or reporter to transcribe the taking of said testimony, and that a copy thereof shall be furnished for the use of the Special Master and a copy thereof shall be furnished for the use of counsel for plaintiffs at defendants' expense.

"IT IS FURTHER STIPULATED AND AGREED that photostatic copies of any exhibits that are admitted into evidence may be substituted for the originals and returned with the depositions to New York. 3482

"IT IS FURTHER STIPULATED AND AGREED that an order to that effect may be made and entered herein without further notice."

A check for \$800. was delivered to Mr. Driscoll in accordance with said stipulation and a check for \$182.30 was delivered to Mr. Auchincloss on account of his railroad expenses, and subsequently a further check was delivered to Mr. Auchincloss for \$270.30 covering the balance of his expenses while in California. 3483

In fixing counsel fees for the attorneys for the plaintiffs, the Court should always have in mind that in cases of this kind in all probability the attorneys for the plaintiffs have an agreement with the plaintiffs whereby the attorneys agree to prosecute the case based upon a percentage—usually  $33\frac{1}{3}\%$  and in some cases even higher—of the amount awarded, and as to the amount awarded, it should not be lost sight of that the plaintiffs are not responsible for the huge sum which the Special Master found to be the gains and profits from the motion picture



*Affidavit of Jesse T. Mills.*

3481 "Letty Lynton". The business ability of the defendants, with the vast producing and distributing organizations at their command, is solely responsible for these profits. The decree which the plaintiffs' counsel succeeded in obtaining in the Circuit Court of Appeals merely provided for an accounting of profits. The defendants themselves introduced every bit of evidence showing gross receipts from all sources and the cost of producing and distributing the motion picture. The labor on the part of counsel for the plaintiffs would have been the same had the profits been meager or even had there been no profits at all. The statute provides, and plaintiffs' counsel were not at all hesitant in insisting, that "the defendant shall be required to prove every element of cost which he claims." Said Mr. Raftery: "All we have to do is to object; he has to prove it. The statute so provides."

3185 The work of counsel before the Special Master and of the Special Master himself would have been in large measure avoided and the hearings considerably lessened had the suggestion of counsel for the defendants been adopted, that the defendants' books and records be examined by an accounting firm of outstanding ability and recognized standing, who would make an impartial audit and report back to the Special Master. But the plaintiffs spurned such an offer and elected to proceed before the  
 486 Special Master where the defendants were put to the task of proving "every element of cost" claimed by the defendants. By pugnaciously insisting upon their strict legal rights, they, and they alone, are responsible for the "swollen" record adduced before the Special Master.

Because of their unjustifiable and "I stay here on my bond" attitude, it is submitted that plaintiffs have dis-entitled themselves to equitable consideration. Surely, in such circumstances, plaintiffs should not be permitted to add to the already heavy and expensive burdens cast upon the defendants.

*Affidavit of Jesse T. Mills.*

As an aid to the Court in the fixation of counsel fees 3487  
 in this case, we have culled from the reports what we believe to be all of the copyright infringement cases in which attorneys' fees were awarded. These cases are set forth below:

Bearing in mind that the award of attorneys' fees must be reasonable and is discretionary with the Court, no fees were allowed in *Buck v. Bilke* (C. C. A. 9th Circuit), 63 Fed. (2d) 447.

In *Schellberg v. Empringham*, 36 Fed. (2d) 991, in view of the difficulties encountered in the suit, and because of the difficult questions involved, necessitating two trials, Judge Knox awarded a counsel fee of \$2500.00 to the successful plaintiff, \$1500.00 payable by the main defendant, \$250.00 payable by the defendant The Health Education Society and \$750.00 payable by the defendant Mathew Bender & Co. 3488

In *General Drafting Co. Inc. v. Andrews*, 37 Fed. (2d) 54 (C. C. A. 2nd) an award of \$4000.00 counsel fees was allowed because of the labor involved in preparing for trial and upon appeal.

In *Cory v. Physical Culture Hotel Co.*, 14 Fed. Supp. 977, and 14 Fed. Supp. 986, a counsel fee of \$2500. was allowed for services rendered in District Court and in the Circuit Court of Appeals even though the court found the services to be worth much more than the sum allowed. There the defendant used the photograph over 1,700,000 times and although the court might have given damages for \$35,000, it nevertheless awarded but \$5000. The court pointed out that if plaintiff were to pay his attorney out of the \$5000. judgment it would have had little, if anything, for itself. The court therefore allowed a counsel fee of \$2500. so that something should be left to the plaintiff after paying his attorney for his services. The award of counsel fee was affirmed by the Circuit Court of Appeals, 3489

*Affidavit of Jesse T. Mills.*

1190 Second Circuit (88 Fed. (2d) 411) and an award of an additional counsel fee in the Circuit Court of Appeals denied, the court saying: "we find the attorney's fee allowed below sufficient in amount to include a reasonable fee in this court also, and so affirm that without making an additional award".

In *M. Witmark & Sons v. Calloway*, 22 Fed. (2d) 412, the court awarded \$250, as a counsel fee to the successful plaintiff in a music copyright infringement suit.

3491 In *Cohan v. Richmond*, 86 Fed. (2d) 680 (C. C. A. 2), the attorney for the defendant asked for a counsel fee of \$3500. This was denied by Judge Patterson without prejudice. The application was renewed and referred to a Special Master who awarded a counsel fee of \$3000. This was reduced by the District Court to \$2000, which assessed the cost of the reference amounting to \$297.50 to the plaintiff. The Circuit Court of Appeals by Judge Learned Hand reduced the award of counsel fee to the attorney for the defendant to \$400, and assessed the cost of the reference against the defendant instead of against the plaintiff holding also that if the cost of the reference had been paid by the plaintiff, then he was entitled to recoup himself for that amount out of the counsel fee of \$400.

3492 In *Schriag Pottery Co. v. Steubenville Pottery Co.*, 9 Fed. Supp. 384, the Special Master reported that plaintiff had paid or had obligated itself to pay to its attorney \$2152.81 before the case reached the Special Master. Under the circumstances the Special Master recommended an allowance of \$2500, as an attorney's fee. The exceptions to the report of the Special Master were overruled except as to the allowance of the counsel fee, the Court saying: "The recommended allowance for a case of the proportions of this one seems to be in excess of an amount which the court might reasonably allow", and reduced the allowance to \$1800.

In *F. A. Mills v. Standard Music Roll Co.*, 223 Fed.

*Affidavit of Jesse T. Mills.*

\$49, aff'd 241 Fed. 360, the counsel fee awarded to the successful plaintiff was \$150. 3493

In *S. E. Hendricks Co. v. Thomas Publishing Co.* (C. C. A. 2), 242 Fed. 37, an allowance of a \$2500. counsel fee was affirmed on appeal.

In *Universal Film Manufacturing Company v. Coppe-man*, 218 Fed. 577, a counsel fee awarded by Judge Hough of \$250. was affirmed.

In *Stodart v. Mutual Film Corporation*, 249 Fed. 507, aff'd 249 Fed. 513, Judge Learned Hand awarded a counsel fee of \$300.

In *Haas v. Leo Feist Inc.*, 234 Fed. 105, Judge Learned Hand decreed an accounting and costs "since the statute requires it". He made, however, no allowance for attorney's fees "for that rests in discretion". 3494

*Lewys v. O'Neill*, 49 Fed. (2d) 603, was an infringement suit in which it was claimed that defendant's successful play "Strange Interlude" infringed plaintiff's play. There plaintiff claimed damages of \$1,250,000. and an accounting of profits of over \$1,000,000. That case was as involved as, if not more so than, the case at bar. Judge Woolsey allowed a counsel fee to O'Neill, the principal defendant, of \$7500; to Boni & Liveright, Inc. and Horace Liveright, Inc. he awarded a counsel fee together of \$5000, and to the Theatre Guild, Inc. a counsel fee of \$5000 was awarded, the said defendants being represented by separate counsel. 3495

In *Anne Nichols v. Universal Pictures Corporation*, 34 Fed. (2d) 145, the trial commenced December 20, 1928 and continued until January 11, 1929, a trial lasting 15 actual court days. Prior to the trial the attorneys for defendants put in three full years of work. The defendant's counsel were headed by Ex-Governor Nathan L. Miller who defended the suit. The facts and the law involved in the Nichols case were much more complicated than the present case and the trial infinitely more difficult.

*Affidavit of Jesse T. Mills.*

96 The defendant proved that its outlay for legal services alone exceeded \$100,000. Judge Gouldard awarded a counsel fee of \$10,000.

In *M. Witmark & Sons v. Pastime Amusement Co.*, 298 F. 470; aff'd 2 F. (2d) 1020, the Court allowed a full bill of costs because it was mandatory and in its discretion awarded plaintiff a fee of \$100. for its attorneys.

In *Fred Fisker Inc. v. Dillingham*, 298 F. 145, Judge Learned Hand, though awarding judgment to the plaintiff for \$250. and a full bill of costs, nevertheless, in his discretion, refused an attorney's allowance, remarking "Such victories I may properly enough make a luxury to the winner".

97 In *Marks v. Leo Feist Inc.*, 8 F. (2d) 460, the Circuit Court of Appeals for the Second Circuit modified the decree allowing an attorney's fee by reducing it from \$1500. to \$500.

In the case of *Davilla v. The Brunswick-Balke-Collender Co. of New York*, 19 F. Supp. 819, aff'd 94 F. (2d) 567, the attorney prayed for an allowance of \$20,000. for 904 hours of his time. The District Court awarded him \$2,000. which the Circuit Court of Appeals cut down to \$1,000.

98 What the plaintiffs here seek is the equivalent of thirteen and one-half ( $13\frac{1}{2}$ ) years pay of a judge of this Court, and their purpose seems to us to ask for everything imaginable in the hope that by asking for a great deal they will be sure to receive something.

The award of counsel fees lies wholly in the discretion of the Court and what was intended as an appeal to the heart and conscience of the Chancellor should not be converted into a plundering expedition.

Bearing in mind what has been said, we believe that the Court in its discretion, without the slightest torment, could very well deny an award of counsel fee; but if the Court should feel that in the exercise of its discretion a



*Reply Affidavit of Edward C. Raftery.*

counsel fee should be awarded to the plaintiffs' attorneys, 3499  
 we respectfully submit that such an award of \$5,000,  
 would be fair and reasonable in the circumstances and  
 that a sum in excess of that amount should not be granted.

JESSE T. MILLS.

Sworn to before me this  
 6th day of July, 1938.

JAY M. EISENBERG,  
 Notary Public,  
 Kings County.

Kings Co. Clk. No. 156, Reg. No. 9057.

N. Y. Co. Clks. No. 145, Reg. 9-E-103.

Bronx Co. Clks. No. 5, Reg. No. 38-E-39.

Queens Co. Clk. No. 1590, Reg. 6339.

Commission Expires March 30, 1939.

3500

**Reply Affidavit of Edward C. Raftery, Read in  
 Support of Motion.**

E 69-218

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[SAME TITLE.]

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3501

State of New York,  
 County of New York,  
 City of New York—ss.:

EDWARD C. RAFTERY, being duly sworn, says:

I am an attorney and counsellor at law and a member  
 of the firm of O'Brien, Driscoll & Raftery, attorneys for  
 the above named complainants.

*Reply Affidavit of Edward C. Raftery.*

witness had a small slip of paper in his vest pocket and when asked a question would examine this slip of paper and testify accordingly.

Realizing we were getting nowhere due to the dilatory tactics of the defendants, we made a suggestion to the defendants that instead of wasting all this time on hearings that we have our accountant make an examination of the books and records used to substantiate the accounts that were filed. This was flatly refused by the defendants. Their counter-proposition was that we select Price, Waterhouse Company to make the audit. They not only refused to have our accountant do it, but they tried to select the accountant that we were to use to make our own audit, at our own expense.

After stalling around for about 7 months, defendants retained Walter Pollak, Esq. to try the accounting on behalf of all the defendants. Mr. Pollak's first appearance in the action was at a hearing on the 31st day of March, 1937, which was the sixth hearing had before the Master. From that time on the hearings proceeded and were eventually finished. The stalling tactics of defendants counsel were abandoned with the entry of Mr. Pollak into the litigation, and without in any way agreeing with the unique, and sometimes fanciful theories that Mr. Pollak had about the Copyright Law, he exhausted every effort to minimize and cut down the recovery in this case.

The colloquy between counsel, cited in Mr. Mills affidavit, occurred prior to Mr. Pollak's entry into the litigation. It occurred during the time that the defendants were either seeking to adjourn hearings or produce witnesses who had no knowledge of the facts. It occurred at the time of the rejection of plaintiffs offer to place their own accountant in and make the necessary audit.

The first hearing was held before the Master on September 9, 1936, although he had been appointed on July 29, 1936. The next hearing was held on October 21, 1936 and on the night before it, to-wit: October 20, 1936, the

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first accounts were served by Metro-Goldwyn Pictures Corporation and Culver Export Corporation. They were filed as Exhibits at the hearing held on October 21, 1936. It was stated at this hearing by defendants counsel that the books of original entry were at the Studio in California. The hearing was adjourned for 10 days to give defendants an opportunity to furnish further figures and also to give the plaintiffs an opportunity to examine the figures.

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On November 5, 1936 the hearing was adjourned to November 6; on November 6 the hearing was adjourned to November 17; on November 17 to November 19; on November 19 to November 20.

Mr. Driscoll who had been in charge of the hearing was not able to be present on November 20, 1936 so I attended the hearing with Mr. Clarke. It was at this hearing that amended accounts were filed. Needless to say these amended accounts reduced the profit on "Letty Lynton" considerably. No books or records, of any kind or character, were produced at any time up to and including this hearing of November 20, 1936. So without getting any books, records or witnesses, the hearing was adjourned to December 2, 1936, and Mr. Berry, an accountant, was produced.

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Mr. Berry testified entirely from the filed account, without producing a book or record, except a slip of paper which he had in his vest pocket. No original records, not even secondary records were produced, although the witness testified repeatedly that original records were in existence which could be examined at any time, if they were produced. At any rate, the hearing was adjourned to December 11, 1936 and at this meeting there occurred the colloquy which is found in Mr. Mills affidavit. He has failed entirely, however, to insert what is found on page 60 of the minutes:

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"Mr. Raftery: Now, Mr. Special Master, we have been down here five times and we are going back

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I have read the affidavit of Jesse T. Mills, submitted, apparently, in opposition to the application of complainants counsel to fix a reasonable counsel fee, in accordance with the decision of the Circuit Court of Appeals, as embodied in the decree of Judge Knox. The affidavit is not made by an attorney, nor by any of the important officers of the defendant corporations, but rather by one of its paid accountants. The affidavit is highly argumentative and is in reality a supplemental brief.

Mr. Mills, the accountant, swears that the trial was "a comparatively simple one" and that the argument of the appeal took but the allotted time. He then attempts to make a detailed analysis of the work done by my partner, Arthur F. Driscoll and his associates and the daily record attached to the application for counsel fee. In connection with the application for a preliminary injunction this same accountant states "that plaintiffs should have known, under the authorities, would not be granted in a case of this kind, where the facts were disputed." Thus intimating to this court that the application should never have been made. As a matter of fact, what happened was that the application was made for a temporary injunction, and in line with a general practice where the facts were disputed, the application for a temporary injunction was denied, but the case was set for immediate trial on the merits.

This same accountant then minimizes the work done by the attorneys in connection with the certiorari application. The detailed daily statements show the tremendous amount of work done by our firm in the 6 years history of this litigation and it is submitted, that it is not proper for a paid employee, lacking entirely the qualification, to criticize or minimize the work done in this case.

It is submitted, therefore, that Mr. Mills' affidavit should be disregarded by this court in connection with the fixation of counsel fees. The duty of this court to fix counsel fees was imposed by the decision of the Circuit Court of Appeals.

On page 6 of the affidavit, this same expert—Mills the

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accountant—states the difficulties experienced by plaintiffs counsel “will be found to be the run of the mill variety of vicissitudes which lawyers engaged in court work have to cope with daily.” 3505

He then goes in to the hearings before the Special Master. Gordon H. Auchincloss, Esq. was appointed Special Master by Judge Knox on the 29th day of July, 1936. Shortly after his appointment and qualification, plaintiffs counsel pressed for an early hearing. It is safe to say—without fear of contradiction—that every time a hearing was set by the Master, counsel for the defendants asked for an adjournment.

In the early stages of the hearings a familiar trick resorted to was to produce a witness who had no knowledge of the facts, and as a result thereof, the hearing would have to be adjourned. At the outset they agreed to prepare written accounts fully accounting for all the profits of “Letty Lynton” from all sources. A set of accounts was prepared for the producing and distributing company and a set for the export company (Culver). It was then the theory of the hearings that plaintiffs counsel could examine these accounts and defendants would furnish the necessary witnesses to support the accounts, so that plaintiffs counsel could examine fully into the items in the accounts. These accounts were submitted to the Master and copies were furnished to counsel. Suddenly, these accounts were withdrawn and a new set of accounts submitted for each of these defendants. 3506

In the early stages of the hearings, a witness would be produced who was supposed to have personal knowledge of the matters contained in a particular account. For example—a witness named Van Straten was produced to substantiate the cost of the Spanish version of the photoplay, which was made in Spain. This witness had never been to Spain; knew nothing about the production of the picture and based a statement which he had prepared on some reports he had received from Spain. This same 3507



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14 to the original proposition that we reached on the first hearing. During the five meetings so far we finally succeeded in getting the gross sales. The gross sales as shown by the amended account of the Metro-Goldwyn Pictures Corporation, domestic sales, \$733,732.62; the gross sales in the foreign field shown in the last hearing amount to \$435,266.64, or a total of \$1,168,999.26. We accept both those figures as admissions against interest, and that is our prima facie case; and we rest on those totals, in accordance with Section 25 of the Copyright Act which states that the plaintiff shall be required to prove sales only. Then the Act says that the defendant shall be required to prove every element of cost which he claims. So, therefore, instead of worrying about figures or witnesses or accepting statements backed up only by totals or a slip of paper which a witness produces, we are going to insist that the defendants come forward with competent evidence to prove their items of expense.

15 "Our damage as proven so far by their own records is \$1,168,999.26. Now, it is up to the defendants to go forward and prove their cost. If they have any deductions they must prove them and must prove them by competent evidence.

16 "That is the plaintiffs' or complainants' prima facie case of damage and amount of damage."

At the same hearing Mr. Cohen, of counsel for the defendants stated that he intended to have their accountants, Miller, Donaldson & Co. present to testify, and also Mr. Craig, counsel for the Studio. At the close of this hearing it developed that all these accountants of the foreign department were present without books and upon inquiry we were advised the books were in Barcelona, and the hearing then adjourned to December 18, 1936; then to January 6, 1937; then to January 13, 1937; then to January

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27, 1937 and finally the hearings resumed on February 1, 1937. So far as the hearings were concerned—from July until February—all that was elicited, in reality, were a few figures grudgingly given and without books or records to support them. I suppose these are the ordinary run of the mill vicissitudes that the expert Mills refers to in his affidavit. 3517

Thereupon, defendants counsel abandoned the idea of bringing witnesses from California, and made a motion before the Master to take depositions in California. The parties stipulated to take these depositions as set forth in the stipulation. 3518

Mr. Mills very improperly in his affidavit states that in cases of this kind, in all probability, the attorneys for the plaintiffs have a contingent agreement with the plaintiffs. Whatever arrangement exists, if any, between plaintiffs and their counsel has no bearing on this application. The mandate of the Circuit Court of Appeals requires the fixation of reasonable counsel fees in the Circuit Court and in the District Court. 3519

Then Mr. Mills goes on to state glibly that it is the business ability of the defendants that made the profits possible, and the labor on the part of counsel for plaintiffs would have been the same had the profits been meager, or if there had been no profits at all.

As regards the first statement—Mr. Mills overlooks the proposition that the defendants appropriated plaintiffs' literary property to make the picture. Hence, the profits. 3519

As regards the second suggestion—it took seven months of protracted delays on the part of plaintiffs counsel to get the gross receipts and the remaining balance of the 2 year period to eliminate the wheat from the chaff in the synthetic deductions built up by the defendants and their counsel in order to minimize their profits.

There will be submitted with this affidavit a resumé of authorities showing the elements to be taken into consideration in fixing counsel fees, and in none of these authorities

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3520 do any of Mr. Mills' suggestions or guides appear, but rather the importance of the litigation, the size of the recovery, the length of time and the extent of the effort put into the litigation, the eminence of opposing counsel, the obstacles put in the path by opposing counsel, the eminence of counsel seeking the allowance, but above all, the results secured in the litigation, is the all determining factor. The size of the recovery, therefore, in this case warrants the allowance of \$135,000., irrespective of the opinion of Mr. Mills.

3521 Mr. Mills on page 15 of his affidavit states: "By pugnaciously insisting upon their strict legal rights, they, and they alone, are responsible for the 'swollen' record adduced before the Special Master." Counsel for the plaintiffs had nothing to do with Mr. Pollak's fanciful ideas of the Copyright Law. These unique ideas of apportionment, all of which were rejected by the Special Master, and rightly so, were not built up by plaintiffs counsel. On the contrary, they had to be torn down by plaintiffs' counsel. Plaintiffs' counsel did not seek to deduct as an item of expense nine hundred some odd thousand dollars paid to Messrs. Rubin, Mayer and Thalberg as their share of the operation of Loew's, Inc. This likewise had to be exploded by plaintiffs' counsel.

3522 The \$1,500,000. interest charges paid to Loew's, Inc. by the subsidiaries of Metro was not injected as an expense by plaintiffs' counsel. It had to be eliminated, however.

The labor and materials theory which Mr. Davis became so confused about on the argument on production and the numerical basis on distribution, was another brain child of the defendants and had to be destroyed, likewise by plaintiffs' counsel and which ultimately were both destroyed by the Master.

Mr. Mills, at page 15 of his affidavit, steps out of his character as an accountant, and to quote him: "We have culled from the reports what we believe to be all of the copyright infringement cases in which attorneys' fees were awarded." In each of the cases cited by Mr. Mills the

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court examined the circumstances and made an award accordingly. That is what plaintiffs' counsel asks this court to do in this case. The mandate of the Circuit Court requires this court to fix a reasonable counsel fee. Each case where a counsel fee is to be awarded must of necessity stand on its own peculiar set of facts and the circumstances surrounding said peculiar set of facts. 3523

In my opinion, this is the most extraordinary plagiarism suit that has ever been tried or decided in the United States courts. It is the first case of its kind where a plaintiff has been successful. In the run of the mill cases (Mills' affidavit) the defendants have always succeeded and the award of counsel fee has been made accordingly. There is no discretion in this case as to whether there will be a counsel fee or not. That discretion was exercised by the Circuit Court of Appeals. There must be an award and the award must be commensurate with the work done if it is to be a reasonable award. 3524

In the case of *Rankin v. Associated Bill Posters* (cited in our brief), which was tried in this court by the late Nathan Burkan, who tried this case before Judge Woolsey, for the defendants, Mr. Burkan's clients recovered judgments, which when multiplied by 3, totalled \$300,000. The trial court fixed a counsel fee of \$50,000.

In *Straus v. Victor* (likewise in our brief) the judgments totalled \$184,000 and the court awarded \$35,000 counsel fee. 3525

In *American Can v. Lcdoga Canning*, tried in the District Court in Indiana, the judgment was in the amount of \$90,000 and the court awarded \$15,000 counsel fee.

These cases all were under the Sherman Act, but the statutes are very similar to the copyright statute in that it permits the award of a reasonable counsel fee to a successful plaintiff—the amount to rest in the discretion of the trial court.

These are the only precedents that a court may look to in awarding a counsel fee in this case. A recovery of \$5,000.

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3526 and an award of \$2,500 counsel fee, as suggested in Mr. Mills' affidavit is not a fair basis, as plaintiffs herein are not asking 50% of the recovery as a counsel fee (*Cory v. Physical Culture Hotel*, page 16 of Mills' affidavit). The other cases are all small in nature or cases in which the defendants have succeeded.

We resent very much the suggestion on page 20 of Mr. Mills' affidavit that we are seeking to convert this application for a reasonable counsel fee into a "plundering expedition".

3527 We, therefore, pray this court that, in view of the importance of the litigation and the result that we have secured for our clients, that our clients be awarded a reasonable attorneys' fee against all of the defendants and we suggest, therefore, the amount of \$135,000.

EDWARD C. RAFFERTY.

Sworn to before me this  
12th day of July, 1938.

LILLIAN E. McMAHON,

Notary Public.

Queens Co. Clk's No. 1224, Reg. No. 5108.

N. Y. Co. Clk's No. 121, Reg. No. 9-M-46.

Commission Expires March 30, 1939.

3528



## Affidavit of Jesse T. Mills.

3529

[SAME TITLE.]

State of New York,  
City of New York,  
County of New York—ss.:

JESSE T. MILLS, being duly sworn, deposes and says:

I am Assistant Secretary and Comptroller of Loew's Incorporated, and have occupied these positions since prior to the year 1932, and since which time all income tax returns of Loew's Incorporated were prepared under my supervision.

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Loew's Incorporated and the other defendants in this suit operate, and since prior to the year 1932 have operated, on a fiscal year basis.

For the fiscal year September 1, 1931 to and including August 31, 1932, Loew's Incorporated and its subsidiary companies filed a consolidated income tax return for its operations during that fiscal year. In that consolidated income tax return, Loew's Incorporated showed a consolidated net taxable income for the said fiscal year of \$7,531,466.85. The Federal income tax showed on the return as originally filed was \$1,021,979.50 (before credit for foreign taxes), which was at the rate of 13.68%.

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Thereafter, the Federal Government successfully maintained that Loew's Incorporated was liable for an additional taxable income of \$209,033.97, which made a total adjusted taxable income of \$7,740,500.82, and assessed a tax on the additional income found to be due of \$28,566.61, making a total adjusted tax of \$1,050,546.11 (before credit for foreign taxes). This additional tax was figured at the rate of 13 $\frac{2}{3}$ %.

Against this total adjusted tax of \$1,050,546.11, Loew's

*Opinion of Leibel, D. J.*

3562 The decree also enjoined defendants from exhibiting the motion picture, directed that the defendants recover their costs and disbursements and that this Court retain jurisdiction for various purposes and to determine the amount to be awarded the complainants for attorney's fees.

This motion brings up for consideration the report of the special master and the exceptions filed thereto, the application of the special master for compensation for his services and the request of the complainants that they be allowed a reasonable counsel fee for services rendered by their attorneys.

3563 On the hearings before the special master the complainants offered no proof of damages but sought an accounting of all the profits the defendants made from the infringement (Copyright Act, 17 U. S. C. A. sec. 25). The special master's report is a volume of eighty-seven printed pages. It is an excellent report. He sets forth the gross sum (\$1,655,269.15), realized from the sales and exhibition of the motion picture and the various elements of cost of production, distribution and exhibition, totaling \$1,067,664.78, which he found to be proper as deductions in determining the net profits of \$587,604.37, the defendants made from the infringement.

The special master in his report states:

3564 "1. Apparently, from the testimony before me, the motion picture business divides itself into three distinct parts or operations;

(a) Production, or making of the picture, including hiring of cast and securing of sets, costumes, literary material, the actual photography, (generally referred to as 'shooting' the picture), and the development of the picture.

(b) Distribution, which includes the leasing of positive prints of the picture to theatre owners

*Opinion of Leibell, D. J.*

or operators (generally referred to as exhibitors), for exhibition in their respective theatres. Distribution is generally made through a corporation maintaining branches (referred to as exchanges) in the different key cities throughout the country; and

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(c) Exhibition, or the actual showing of the picture on the screen to the public by the owner or operators of a theatre.

2. The motion picture LETTY LYNTON was produced by Metro-Goldwyn-Mayer Corporation. It was thereafter turned over to Metro-Goldwyn Pictures Corporation at cost. Metro-Goldwyn Pictures Corporation turned over the picture to Metro-Goldwyn-Mayer Distributing Corporation for domestic distribution; upon an arrangement whereby the Distributing Company was to pay to the Pictures Corporation 80% of the gross receipts or proceeds received from the rental of said picture to exhibitors (Defendants' Exhibits 17, 18, 19).

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Thereafter the Distributing Company rented the picture to exhibitors throughout the United States and its possessions, and paid to Metro-Goldwyn Pictures Corporation 80% of the gross receipts (Defendants' Exhibit 19).

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The picture was also turned over by Metro-Goldwyn Pictures Corporation to Culver Export Company for foreign distribution, and to Regal Films, Ltd., for Canadian distribution. Culver Export Corporation in turn distributed it abroad (excepting Canada) through wholly owned foreign subsidiaries (except in Sweden), which in turn paid to Culver Export Corporation a percentage of the gross receipts varying with the different foreign subsidiaries (Defendants' Exhibits 17, 20, 21).

*Opinion of Leibell, D. J.*

3568

3. The picture was distributed in Canada through a contract with the Regal Films, Ltd., a Canadian corporation, not owned or controlled by any of the defendants, and the proceeds received by the Pictures Corporation from said Regal Films, Ltd., are accounted for by the Pictures Corporation (Defendants' Exhibits 18, N. Y. S. M., 375).

4. A separate account has been filed by each defendant named in this action.

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An account was filed by Metro-Goldwyn Pictures Corporation which included the 80% of the rentals received by Metro-Goldwyn Pictures Corporation from the Metro-Goldwyn-Mayer Distributing Corporation, and took as a deduction against said rentals, the cost of the making of the picture by the Producing Company (Defendants' Exhibit 18).

An account was filed by Metro-Goldwyn-Mayer Distributing Corporation which accounted for the 20% of the gross rentals retained by the Distributing Corporation (Defendants' Exhibit 19).

An account was filed by the Culver Export Corporation which accounted for the part of the proceeds derived from foreign distribution received by Culver Export Corporation from its foreign subsidiaries (Defendants' Exhibit 20).

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An account was filed on behalf of the foreign subsidiaries which accounted for the portion of the gross receipts from foreign rentals retained by those foreign subsidiaries (Defendants' Exhibit 21).

An account was filed by Loew's Inc., which accounted for the profits of all of the Loew Theatres in which the said picture was exhibited (Defendants' Exhibits L-6—L-13, both inclusive).

5. The corporation organization chart as of August 31, 1932, appears as Defendants' Exhibit

*Opinion of Leibell, D. J.*

17. This shows that Loew's, Inc., owned at that time 100% of the stock of the MGM Company, Inc., and that the MGM Company, Inc., owned 100% of the common stock of Metro-Goldwyn Pictures Corporation. The Metro-Goldwyn Pictures Corporation preferred stock was listed on the New York Stock Exchange and about 10% of it was owned by Loew's Inc. Metro-Goldwyn Pictures Corporation in turn owned all of the capital stock of the Metro-Goldwyn-Mayer Distributing Corporation (domestic distributor), Metro-Goldwyn-Mayer Corporation (producer) and the Culver Export Corporation. 3571

6. The decree above quoted instructs the Special Master to 'report separately the amount of such gains and profits of the defendants obtained from all sources outside of the United States'. This, in effect, means that the account of the defendant, Culver Export Corporation and the account of its foreign subsidiaries are to be separately examined. 3572

The report then considers separately the accounting made by the defendants, discusses the various items involved therein, lists those items concerning which there was no controversy and states the special master's reasons for disallowing other items. The accounts filed by the defendants are restated by the special master in accordance with his rulings on the contested items contained therein. 3573

Rule 61½ of the old Equity Rules, promulgated by the United States Supreme Court, provides that "the report of the master shall be treated as presumptively correct". Under Rule 1 of the Rules of Practice in copyright proceedings, effective July 1, 1909, "the rules of equity practice, so far as they may be applicable shall be enforced in proceedings instituted under section 25" of the Copyright Act. The new Federal Rules of Civil Procedure do not apply because, under Rule 81 (a) (1) thereof, they have



**Opinion of Leibell, D. J.**

No. E 69-218.

O'BRIEN, DRISCOLL & RAFTERY, ESQS., Attorneys for Complainants, 152 West 42nd Street, New York City (Arthur F. Driscoll, Esq., Edward C. Raftery, Esq., Edward J. Clarke, Esq., T. Newman Lawler, Esq., and Sidney G. Rosenbloom, Esq., of Counsel).

J. ROBERT RUBIN, Esq., Attorney for defendants, Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation, 1540 Broadway, New York City.

LEOPOLD FRIEDMAN, Esq., Attorney for defendant, Loew's Inc., 1540 Broadway, New York City.

SAMUEL D. COHEN, Esq., Attorney for defendant, Culver Export Corporation, 1540 Broadway, New York City (John W. Davis, Esq., Samuel D. Cohen, Esq., Earle L. Beatty, Esq., and J. Paschall Davis, Esq., of Counsel).

**LEIBELL, D. J.**

Complainants, Edward Sheldon and Margaret Ayer Barnes, instituted this suit against the defendants, Metro-Goldwyn Pictures Corporation, Metro-Goldwyn-Mayer Distributing Corporation, Loew's Inc. and Culver Export Corporation alleging that the defendants in making, distributing and exhibiting their motion picture "Letty Lynton" appropriated and infringed upon complainants' dramatic composition "Dishonored Lady". The case was tried and the complaint dismissed (7 Fed. Supp. 837). The decree of the District Court was reversed on appeal (81 Fed. (2d) 49). The concluding paragraph of the appellate court's opinion provides:

"The decree will be reversed and an injunction will go against the picture together with a decree

*Opinion of Leibell, D. J.*

for damages and an accounting. The plaintiffs will be awarded an attorney's fee in this court and in the court below, both to be fixed by the District Court upon the final decree." 3559

On the mandate of the Circuit Court of Appeals an interlocutory decree was entered in this Court wherein it was adjudged that the defendants had infringed complainants' copyright by copying complainants' dramatic composition, by manufacturing therefrom the motion picture "Letty Lynton", by distributing the motion picture and by exhibiting it for profit. The decree directed:

"4. That the complainants recover of the defendants and each of them all damages sustained by them and that the complainants recover of the defendants and each of them all gains and profits made by the defendants and each of them because of the said infringement upon complainants' copyright by copying said dramatic composition or by making the said motion picture 'LETTY LYNTON' and and by their use and trafficking in, or in any manner dealing with the said motion picture 'LETTY LYNTON', or in any rights thereto or by giving public performances thereof, or causing, licensing, aiding and abetting or in any other manner assisting in the giving of public performances thereof, or in any other way, form or manner whatsoever." 3560 3561

A special master was named in the decree

"to ascertain and report the amount of complainants' damages herein and the amount of such gains and profits of the defendants and each of them and in addition, the said Special Master shall report separately the amount of such gains and profits of the defendants, obtained from all sources outside of the United States."

*Affidavit of Jesse T. Mills.*

**3532** Incorporated was allowed a credit for foreign taxes paid by Culver Export Corporation, because of its income from foreign countries, of \$307,905.31 and its subsidiaries of \$829.15, a total of \$308,734.46, which amount deducted from \$1,050,546.11 left \$741,811.65 duly paid the Federal Government.

I give below the allocation of the taxable income, the allocated tax and the name of the Company against which the income and tax were allocated:

	Name	Taxable Income	Tax Paid
	Loew's Incorporated	\$4,469,800.98	\$610,872.81
<b>3533</b>	Metro-Goldwyn Pictures Corporation	128,102.35	17,507.32
	Metro-Goldwyn-Mayer Distributing Corporation	268,221.88	36,656.99

The above tax of \$741,811.65, plus the taxes paid foreign governments of \$308,734.46, made the total tax of Loew's Incorporated and its subsidiaries, for the fiscal year ended August 31, 1932, \$1,050,546.11.

The Federal income tax of Loew's Incorporated and of its affiliated corporations for the said fiscal year ended August 31, 1932, was paid in installments on the following dates:

**3534**

November 15, 1932	\$250,000.00
February 15, 1932	150,000.00
May 15, 1932	133,654.01
August 15, 1933	177,884.67
August 18, 1934	30,272.97
Total	<u>\$741,811.65</u>

The accounting of the defendant Culver Export Corporation was based on 1933 figures, the receipt of Culver Export

*Affidavit of Jesse T. Mills.*

3535

Corporation from the picture "Letty Lynton" having come in principally during the fiscal year ended August 31, 1933 and the expenses incurred by Culver Export Corporation involving the motion picture "Letty Lynton" having occurred during said fiscal year.

For the fiscal year September 1, 1932 to and including August 31, 1933, Loew's Incorporated and its subsidiary corporations filed a consolidated income tax return for its operations during that fiscal year. In the consolidated income tax return, Loew's Incorporated showed a consolidated net taxable income for the said fiscal year of \$5,576,871.09. The Federal income tax shown on the said return as so filed (before credit for foreign taxes) was \$808,646.31, which was at the rate of  $14\frac{1}{2}\%$ .

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The portion of the taxable income included in the said consolidated income tax return so filed by Loew's Incorporated for the fiscal year ended August 31, 1933, which was applicable to Culver Export Corporation, amounted to \$4,653,895.88, and the income tax so applicable to the said Culver Export Corporation, figured in accordance with Revenue Act of 1932 at the rate of  $14\frac{1}{2}\%$ , was \$674,814.90.

Against the total consolidated Loew's Incorporated income tax, the Government allowed a credit of \$435,479.65, for foreign income taxes paid by Culver Export Corporation because of its income from foreign countries. An additional credit was allowed by the Federal Government for foreign income taxes paid by subsidiary companies of Culver Export Corporation, because of their receipt of income from foreign countries, of \$5,571.89, making a total credit allowed by the Federal Government of \$441,051.54, which sum, deducted from \$808,646.31 shown on the consolidated income tax return of Loew's Incorporated (before the foreign tax credit) made a net income tax payable by Loew's Incorporated for the fiscal year ended August 31, 1933, of \$367,594.77.

3537

The above tax of \$367,594.77 and the taxes paid to the

*Affidavit of Jesse T. Mills*

3538 foreign governments of \$441,051.54 made the total taxes of Loew's Incorporated and its subsidiaries, for the fiscal year ended August 31, 1933, \$808,646.31.

The Federal income tax for the said fiscal year was paid on the following dates:

November 11, 1933	\$95,000.00
February, 15, 1934	95,000.00
May 15, 1934	85,696.08
August 15, 1934	91,898.69

Total	<u>\$367,594.77</u>
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The Statute of Limitations has barred Loew's Incorporated and its subsidiary corporations from filing any claim for refund of taxes paid for either the fiscal year ended August 31, 1932 or the fiscal year ended August 31, 1933.

J. T. MILLS.

Sworn to before me this  
14th day of October, 1938.

BERTHA FRIED,  
Notary Public,  
Bronx County.

3540

Bronx Co. Clk's No. 82, Reg. No. 67F39.  
Certificate filed in New York County.  
N. Y. Co. Clk's No. 309, Reg. No. 9E226.  
Term Expires March 30, 1939.



# Stipulation as to Federal Income Taxes of Defendants. 3541

E 69-218.

[SAME TITLE.]

## FEDERAL INCOME TAXES.

The Special Master found that the profits made by Metro-Goldwyn Pictures Corporation through the manufacture and sale and distribution of the motion picture LETTY LYNTON were \$268,861.14.

3542

The total amount of profits upon which the said corporation paid tax during the same year was less than said amount, or \$124,902.35.

From the foregoing it is apparent that the corporate taxable profit for that year was less than the profit made on the picture LETTY LYNTON. Assuming the profits to have been the amount found by the Special Master and stated above, the maximum rate through which to ascertain the deduction to which the defendants are entitled is 13-1/6% on \$124,902.35, or \$16,445.48.

The Special Master found that the profits made by the Distributing Company were \$68,603.42.

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The said Distributing Company had corporate taxable profit for the same period of \$268,221.88. Therefore, the maximum rate through which to ascertain the deduction to which the respondents are entitled is 13-1/6% on \$68,603.42, or a tax of \$9,032.79.

The Special Master has found that the profits of Loew's, Inc. and its subsidiaries as exhibitors of the said picture were \$97,466.68. Allowing for the instances where the profit on the exhibition of the picture LETTY LYNTON exceeded the gross corporate profit, the total amount of

*Stipulation as to Federal Income Taxes of Defendants.*

3544 profit upon which the said Loew's Inc. would be taxable was. \$85,593.42.

The maximum rate through which to ascertain the deduction to which the respondents are entitled is 13-1/6% on \$85,593.42, or a tax of \$11,269.80.

The Special Master has found the profits of the foreign subsidiaries in the distribution of said picture to be \$58,914.57.

The total profit made by the foreign subsidiaries was \$1,432,486.43.

The rate of tax is arrived at in the following manner:

3545 (a) The full American tax at the American corporation rates is ascertained.

(b) There is deducted from that figure the taxes paid Abroad, which under the American income tax law, are allowed as a credit.

(c) The balance left to be paid in this country establishes a rate of 3.37 of the net profits. Applying that rate to \$58,914.57, would give a tax of \$1,987.37.

The Special Master found the profit of the Culver Export Company to be \$93,758.56.

3546 The total corporate profits of the said company are \$4,662,687.99.

The rate to be applied in this instance is arrived at as follows:

(a) The American corporate tax return for that fiscal year was 13.75. The tax is ascertained by applying that return to the income.

(b) There is deducted from the tax thus ascertained foreign taxes paid.

*Stipulation as to Federal Income Taxes of Defendants.*

(c) This establishes a rate of 13.22 of the taxable income. Applying this rate to \$93,758.56, gives a tax of \$12,394.88.

IT IS STIPULATED AND CONCEDED that if income taxes are to be allowed to the respondents as deductions, the foregoing constitutes the correct method of arriving at the rates, and the amounts set forth are the maximum amount of taxes to be allowed as deductions on the amounts of profits ascertained by the Special Master.

**Recapitulating the above:**

	Loew's Share of LETTY LYNTOX Profits	Corporate Taxable Profit	Loew's Share Profit on Which Tax is Calculated	Effective Tax Rate	Federal Tax
etro-Goldwyn Pictures Corp.	\$268,861.14	\$124,902.35	\$124,902.35	13-1/6	\$16,445.48
etro-Goldwyn- Mayer Dist.	68,603.42	268,221.88	68,603.42	13-1/6	9,032.79
ew's Inc.	97,466.68	—	85,593.42	13-1/6	11,269.80
Theatres	58,914.57	1,432,486.43	58,914.57	3.37	1,987.37
oreign Sub- sidiaries	93,758.56	4,662,687.99	93,758.56	13.22	12,394.88
ilver Export					
	<u>\$587,604.37</u>				<u>\$51,130.32</u>

The foregoing is without prejudice to the right of the complainants to contest the allowance of any deductions because of income taxes.

The foregoing is also without prejudice to the claim of the defendants that Loew's Incorporated is not liable for an accounting herein because of the exhibition of the picture LETTY LYNTOX by corporations whose stock is held, in whole or in part, by Loew's Incorporated whether directly or through intermediate corporations; nor to the claim of Culyer Export Corporation that it is not liable for an accounting herein because of the distribution of the

*Stipulation as to Federal Income Taxes of Defendants.*

0 picture LETTY LYNTON in foreign countries by separate and distinct foreign corporations.

Dated, New York, November 14, 1938.

O'BRIEN, DRISCOLL & RAFTERY,  
Attorneys for Complainants.

J. ROBERT RUBIN,  
Attorney for Respondents Metro-Goldwyn  
Pictures Corporation and Metro-Goldwyn-  
Mayer Distributing Corporation.

1. LEOPOLD FRIEDMAN,  
Attorney for Respondent Loew's, Inc.

SAMUEL D. COHEN,  
Attorney for Respondent  
Culver Export Corporation.

**Additional Stipulation as to Federal Income Taxes.**

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[SAME TITLE.]

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In respect to the stipulation dated November 14, 1938, filed with the Court November 23, 1938, dealing with income taxes the defendants claimed as a deduction in their accounting herein, IT IS AGREED that there be added to the said stipulation the following paragraph, to wit:

The only issue pending with the tax authorities in respect to the income tax returns of the defendants for the years mentioned in the stipulation is whether the government has the right to assess additional taxes. No claim for refund of any part of the taxes covered by this stipulation has been made by any of the defendants.

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Dated, December 21st, 1938.

**O'BRIEN, DRISCOLL & RAFFERTY,**  
Attorneys for Complainants.

**J. ROBERT RUBIN, by S. D. COHEN,**  
Attorney for Respondents Metro-Goldwyn  
Pictures Corporation and Metro-Goldwyn-  
Mayer Distributing Corporation.

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**LEOPOLD FRIEDMAN, by S. D. COHEN,**  
Attorney for Respondent Loew's, Inc.

**SAMUEL D. COHEN,**  
Attorney for Respondent  
Culver Export Corporation.



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3586 within brackets were added to this section in 1912. Under the decisions of the Supreme Court and of the Circuit Court of Appeals in this circuit, as hereinafter discussed, the trial court may not award statutory damages "in lieu of actual damages and profits" where there is satisfactory proof of the copyright owner's actual damages or of the infringer's actual profits.

3587 Defendants argue in effect that "an award of all the profits resulting from an infringement", although the only money relief on which complainants submitted any proof (there was no proof of complainants' damages) "may be so disproportionate to the injury to complainant and so excessive in amount as to be inequitable and unjust". (See, dissenting opinion of Judge McCormick in *Harold Lloyd Corporation v. Witner*, 65 F. (2d) 1, 45.) The majority opinion in the *Harold Lloyd* case did not disagree with this proposition as indicated by the following quotation:

"We are assuming \* \* \* that the copyright owner is entitled to all the profits derived from the infringing play. We do not wish to be understood as approving that doctrine which is one of the main issues in the case at bar, if infringement is found."

3588 Much of Judge McCormick's opinion in the *Harold Lloyd* case is based upon his interpretation of the words "in lieu thereof" in Section 25 of the Copyright Act, as indicating that Congress intended "to enable the court to meet the exigencies of each case by the exercise of sound judicial discretion in awarding pecuniary redress to the copyright proprietor in addition to injunctive relief".

The *Harold Lloyd* case was decided by the Ninth Circuit in 1933. In 1935 the Supreme Court of the United States had before it the case of *Douglas v. Cunningham*, 294 U. S. 207.

*Opinion of Leibell, D. J.*

I am of the opinion that the only cases in which the "in lieu thereof" provision applies are those 3589

"where the rules of law render difficult or impossible proof of damages or discovery of profits."

as was stated by Mr. Justice Roberts in the *Douglas* case, *supra*.

In the case at bar there has been discovery of the profits made by defendants from the picture. So there appears to be no discretion resting with the trial court, on the present state of the law, to substitute its own views of what should be the amount of plaintiffs' judgment in lieu of the actual net profits made by the defendants. 3590

The Court of Appeals in the Second Circuit in the case of *Davilla v. Brunswick Balke Collender Co.*, 94 F. (2d) 567, cites the case of *Douglas v. Cunningham* and states "Whether profits shall be awarded or statutory damages allowed is not a matter of choice with a plaintiff." Nor did the appellate court leave it as a matter of choice with the trial court. The decree of the lower court awarding statutory damages of \$5,000 was modified because the appellate court held that the proof before the special master was sufficient to establish the infringers' profits at \$1,057.53.

In the case of *Dam v. Kirk La Shelle Co.*, 175 Fed. 903, at page 908, Judge Noyes writing for the Circuit Court of Appeals in this Circuit in 1910, stated: 3591

"It is equally impossible for him to show the proportion of the profits accruing to a theatrical company from the use of a copyrighted theme or plot and the proportion accruing from the use of the scenery, the employment of favorite actors, and other sources."

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I am bound by that decision, even though I believe it "runs counter to the course later followed by that Court in apportioning profits in patent infringement cases and to the arguments therein expressed". Further Judge Noyes wrote the above quoted sentence in a copyright case some years prior to Judge Van Devanter's opinion in the *Dowagiac* (patent) case (*infra*) in which, while admitting the impossibility of mathematical exactness the Justice expressed his satisfaction with such reasonable approximation as could be obtained through the testimony of experts and informed persons.

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In the present case defendants asked the special master to make the apportionment declared impossible in the case of *Dam v. Kirk La Shelle Co.* This phase of the evidence and these contentions of the defendants for an apportionment of the profits are not mentioned in the special master's report. He probably took the testimony on this point so that it could be made part of the record herein, for such consideration as an appellate court might deem warranted by the facts of this case. The interlocutory decree naming the special master provided:

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"that the complainants recover of the defendants and each of them all gains and profits made by the defendants and each of them because of the said infringement"

and he determined that the profits from the picture were the profits from the infringement and awarded all those profits to the plaintiff. The only damages recoverable under the final decree in a suit for copyright infringement are such as the interlocutory decree adjudged. *Russell & Stoll Ex. v. Oceanic Elec. Supply Co.*, 80 F. (2d) 864.

Defendants urge that this court should apply to the case of copyright infringement the principle of apportioning profits based on a royalty to be fixed by the Court, as is frequently done in patent cases where a machine in one of

*Opinion of Leibell, D. J.*

its parts infringes a patent relating to that part only. It was manifestly unjust to award all the profits from the sale of the machine to the owner of a patent that was infringed by only a part of the machine. Because of the unjust results under the provisions of the Patent Law, prior to their amendment (See §70) the Courts applied a rule of their own as expressed in *Dowagiac Mfg. Co. v. Minnesota Moline Plow Co.* (1915), 235 U. S. 641, 646:

"In so far as the profits from the infringing sales were attributable to the patented improvements they belonged to the plaintiff, and in so far as they were due to other parts or features they belonged to the defendants. But as the drills were sold in completed and operative form, the profits resulting from the several parts were necessarily commingled. It was essential, therefore, that they be separated or apportioned between what was covered by the patent and what was not covered by it; for, as was said in *Westinghouse Electric & Mfg. Co. v. Wagner Electric & Mfg. Co.*, *supra* (p. 615): 'In such case, if plaintiff's patent only created a part of the profits, he is only entitled to recover that part of the net gains.' In the nature of things the profits pertaining to the patented improvements had to be ascertained before they could be recovered by the plaintiff, and therefore it was required to take the initiative in presenting evidence looking to an apportionment. Referring to a like situation, it was said in the case just cited (p. 617): 'The burden of apportionment was then logically with the plaintiff, since it was only entitled to recover such part of the commingled profits as was attributable to the use of its invention.' But the plaintiff did not conform to this rule. It neither submitted evidence calculated to effect an apportionment, nor attempted to show that

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3580 themes, motives, or ideas in which there could be no copyright, matters in the public demesne. The Circuit Court of Appeals in its opinion states (81 F. (2d) 49) at page 54:

"In the case at bar there are then two questions: First, whether the defendants actually used the play; second, if so, whether theirs was a 'fair use.' The judge did not make any finding upon the first question, as we said at the outset, because he thought the defendants were in any case justified; in this following our decision in *Nicholas v. Universal Pictures Corporation*, 45 F. (2d) 119."

3581 The Circuit Court of Appeals found that the defendants did use a substantial part of plaintiffs' play and that it was not a fair use, and stated (p. 56):

"True, much of the picture owes nothing to the play; some of it is plainly drawn from the novel; but that is entirely immaterial; it is enough that substantial parts were lifted; no plagiarist can excuse the wrong by showing how much of his work he did not pirate. We cannot avoid the conviction that, if the picture was not an infringement of the play, there can be none short of taking the dialogue."

3582 There can be no apportionment of the profits of the infringing composition based upon a comparison of what was plagiarized with what was not. As we stated by Mr. Justice Blatchford in *Callahan v. Myers*, 128 U. S. 617 at page 666:

"If the volume contains matter to which a copyright could not properly extend, incorporated with matter proper to be covered by a copyright, the two necessarily going together when the volume is sold, as a unit, and it being impossible to separate the



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profits on the one from the profits on the other, and the lawful matter being useless without the unlawful it is the defendants who are responsible for having blended the lawful with the unlawful, and they must abide the consequences, on the same principle that he who has wrongfully produced a confusion of goods must alone suffer."

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Further, in an accounting of the infringers' profits "the value which the plaintiff put upon its rights in incomplete negotiations with the defendants will be wholly immaterial".

*L. C. Page & Co. v. Fox Film Corporation*, 83 F. (2d) 196, 199.

The pertinent provisions of Section 25 of the Copyright Act are printed in a footnote.\* The parts thereof enclosed

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\* "§25. INFRINGEMENT. If any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

(b) DAMAGES AND PROFITS; AMOUNT; OTHER REMEDIES. (b) To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, but in case of a newspaper reproduction of a copyrighted photograph such damages shall not exceed the sum of \$200 nor be less than the sum of \$50, (and in the case of the infringement of an undramatized or nondramatic work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing, and that such infringement could not have been reasonably foreseen, such damages shall not exceed the sum of \$100; and in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work, and that such infringements could not reasonably have been foreseen, the entire sum of such damages recoverable by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of \$5,000 nor be less than \$250, and such damages shall in no other case exceed the sum of \$5,000 nor be less than the sum of \$250, and shall not be regarded as a penalty. (But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him.)"

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*Opinion of Leibell, D. J.*

the infringing carburetors was sufficiently shown to entitle it to a deduction for income taxes paid which will leave it accountable to the plaintiff for only the profits of which it actually has had the benefit. *Stromberg Motor Devices Co. v. Detroit Trust Co.*, *supra*; *Macheth-Eravs Glass Co. v. L. E. Smith Glass Co.* (C. C. A.) 23 F. (2d) 459. See, also, *Straus v. Notaseme Hosiery Co.*, 240 U. S. 179, 36 S. Ct. 288, 60 L. Ed. 590."

In the present case the District Judge dismissed the bill and his ruling was reversed by the Circuit Court of Appeals. The District Judge certainly believed that the issues raised by the defendants had merit. The Circuit Court of Appeals in its opinion stated that in dismissing the complaint the District Judge was following the Circuit Court's decision in *Nicholas v. Universal Pictures Corp.* (*supra*). To refuse to permit the defendants to deduct the corporate income taxes they paid on the profits of "Letty Lynton" would be in effect the imposition of a penalty, super-imposed on the judgment for profits herein.

Because he felt that the then state of the proof in respect to the actual payment of these taxes was unsatisfactory, the special master suggested that the court in its decree set aside in special escrow subject to the further order of the Court a sum equal to the 14½% corporate income tax on the net profits; subject to certain terms and conditions with which neither side to the controversy seemed satisfied, as their exception to that part of the report indicate. On the arguments before me on the various subdivisions of the report, it was agreed that it would be better to dispose of the income tax issue now than to leave it open for future consideration under the escrow plan. The accountants for both sides have conferred and after an examination of the defendants' income tax returns and the present status thereof, counsel have entered into a stipulation, dated November 14, 1938, in which the rate of the tax and the

*Opinion of Leibell, D. J.*

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amount thereof in dollars as paid by the defendants on the taxable profits of "Letty Lynton" are set forth in detail. This stipulation was supplemented by a rider on December 21, 1938, which declared that the only issue pending before the tax authorities in respect to defendants' income tax returns for the relevant years is whether the government shall assess additional taxes, and that no claim for a refund of any part of the taxes covered by the stipulation has been made by any of the defendants. The statute of limitations would now bar any such claim for refund.

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Complainants have raised a new point in opposition to the allowance of a deduction of the defendants' income taxes from the profits of "Letty Lynton". They assert that the defendants will be entitled to deduct as a loss the amount of any judgment herein in the year in which it is put in judgment or paid (*Central Trust Co. v. Burnet*, 45 F. (2d) 922; *Lucas v. American Code Co.*, 280 U. S. 445) and that since corporation income tax rates are higher now than when defendants received the "Letty Lynton" profits the defendants will benefit thereby. If defendants are permitted on this accounting to deduct the corporate income taxes actually paid on the "Letty Lynton" profits the amount of the judgment herein will be so much less, and the amount defendants will be entitled to deduct later as a tax loss will be correspondingly less, and the amount on which the complainants will pay an income tax will also be less. In my opinion whatever tax advantage defendants may gain when they pay or settle complainants' judgment herein is irrelevant to the issue, just as is the effect the receipt by complainants of this large sum may have on complainants' tax situation.

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As to the Culver Corporation's accounting, defendants contend that the Culver Corporation should not be charged with profits derived from the sale or leasing of the picture "Letty Lynton" outside the United States, that all of Culver's profits were made in foreign countries except

*Opinion of Leibell, D. J.*

3574 not as yet been made applicable to proceedings in copyright by any rule promulgated by the Supreme Court of the United States. In *Callaghan v. Myers*, 128 U. S. 617, Mr. Justice Blatchford, in a case involving a copyright infringement, wrote:

3575 "In considering the exceptions of the defendants to the masters' reports in matters of fact, questioning the accuracy of their conclusions in respect to the amount of the defendants' profits, we have observed the rule recognized and affirmed in *Tilghman v. Proctor*, 125 U. S. 136, 139 (31:664, 668), that, in dealing with such exceptions, 'The conclusions of the master, depending upon the weighing of conflicting testimony, have every reasonable presumption in their favor, and are not to be set aside or modified unless there clearly appears to have been error or mistake on his part.'"

It may be noted that the concluding statement in the above quotation is very similar to Rule 53 (e) (2) of the new Federal Rules of Civil Procedure.

3576 Before considering the exceptions filed by the parties to specific items of the account, I will discuss a general exception of the defendants, raising a fundamental issue, as to the nature and extent of the profits to be accounted for by the defendants.

Defendants contend that under Section 25 (b) of the Copyright Act they are required to pay complainants only the profits defendants realized from the infringement, which they interpret as meaning the profits realized from the use made of complainants' play as distinguished from profits attributable to other elements that made the motion picture a financial success. Defendants argue that the complainants should not receive all the net profits realized from the sale, leasing and exhibition of the picture, but only so much thereof as may justly be considered as the play's contribu-

*Opinion of Leibell, D. J.*

tion thereto. In support of this contention defendants show that the picture, when released to exhibitors under a block booking arrangement, was listed only as "Production No. 208, Joan Crawford No. 2", and that the box-office drawing powers of the screen stars, Joan Crawford and Robert Montgomery actually produced the profits.

There was submitted to the special master an analysis "to show the limited nature and extent of the infringement as bearing on the quantum of the award to be made by the master". Evidence from experts and other sources was presented to establish that the "maximum average contribution of a play such as Dishonored Lady to the moving picture Letty Lynton could not possibly amount to more than 10% of the net domestic profits of the picture". Proof was offered through well-known producers of the royalties paid to authors whose works were used as the basis for motion pictures, such as "Peter Pan". For the motion-picture rights to that play and its title, Sir James Barrie received 7% of the gross receipts. The motion-picture rights of "Gone with the Wind" were sold for \$50,000. In the present case complainants had entered into a contract for a sale of their play to one of the defendants for \$30,000, subject to the approval of the Will Hays group of censors who refused to pass it. The net profits the master has awarded to complainants are \$587,604.37, almost twenty times that price.

Complainants' play was based upon the celebrated murder trial of Madeleine Smith in Scotland in 1857. The defendants, instead of buying the motion picture rights to the play, after it was barred by the censors, purchased for \$3,500 the rights to a novel, "Letty Lynton", written about the same time by Mrs. Belloc Lowndes and based on the same theme.

On the trial of the infringement issue in this case the complaint was dismissed because the trial court held in effect that the defendants had used only those general

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*Opinion of Llibell, D. J.*

one was impossible; and this, although the evidence upon the accounting went far towards showing that there was no real obstacle to a fair apportionment. Certainly no obstacle was interposed by the defendants. It well may be that mathematical exactness was not possible, but, as is shown in *Westinghouse Electric & Mfg. Co. v. Wagner Electric & Mfg. Co.*, *supra* (pp. 617, 620-622), that degree of accuracy is not required, but only reasonable approximation, which usually may be attained through the testimony of experts and persons informed by observation and experience. Testimony of this character is generally helpful and at times indispensable in the solution of such problems. Of course, the result to be accomplished is a rational separation of the net profits so that neither party may have what rightfully belongs to the other, and it is important that the accounting be so conducted as to secure this result, if it be reasonably possible."

See, also, opinions by Judge Learned Hand in *Page Machine Co. v. Dorr Jones & Co.* (1916), 238 F. 369, and *Cincinnati Car Co. v. New York Rapid Transit Corp.*, 66 F. (2d) 592.

In my opinion it is punitive and unjust to award all the net profits of the motion picture "Letty Lynton" to the complainants in this case. Yet under the wording of the Copyright Act (§25) as interpreted by the decisions of the appellate courts, I can do nothing less. The rule for apportioning profits, followed in patent infringement cases, should not be difficult of application to copyright infringement cases. The courts overcame the difficulty in patent cases by awarding something in the nature of a royalty, that would represent "a point or sum where it is demonstrable that to go beyond that point or exceed that sum is to set over to plaintiff profits to which the infringing elements

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make no contribution". *Standard Scale & Supply Co. v. Cropp Concrete Mach. Co.*, 6 F. (2d) 447, 455. 3601

If complainants get all the profits of the picture they are receiving the profits that Joan Crawford and Robert Montgomery made for the picture by their dramatic talent and the drawing power of their reputations as motion picture stars. The directors who supervised the production of the picture and the experts who filmed it also contributed in piling up these tremendous net profits. Complainants' counsel refers to defendants' contribution to the success of the picture as "labor and material". Deducting the salaries of these personages from the gross receipts merely reimburses the defendants for their actual costs and expenses, but gives to the complainants all of the profits the defendants' stars and directors and filming experts made for the picture. The testimony of experts should be received on the question of how much the use of complainants' play contributed to the profits of the picture, just as similar expert testimony is now received in patent infringement cases under Section 70 of the Patent Law, from which the following is quoted: 3602

If on the proofs it shall appear that the complainant suffered damage from the infringement or that the defendant has realized profits therefrom to which the complainant is justly entitled, but that such damages or profits are not susceptible of calculation and determination with reasonable certainty, the court may, on evidence tending to establish the same, in its discretion, receive opinion or expert testimony; which is hereby declared to be competent and admissible, subject to the general rules of evidence, applicable to this character of testimony; and upon such evidence and all other evidence in the record the court may adjudge and decree the payment by the defendant to the complainant of a reasonable sum as profits or general damages for the infringements. 3603

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The above paragraph was added to Section 70 in 1922 sometime after the Supreme Court in the Dowagiac case suggested the use of experts, in the opinion hereinabove quoted.

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An allowance to complainants of 25% of the net profits, as restated, or about \$133,000 would be such a sum as could be justly fixed as a limit beyond which complainants would be receiving profits in no way attributable to the use of their play in the production of the picture. Sir James Barrie received 7% of the gross receipts from the motion picture based on "Peter Pan". For that he assigned the motion picture rights to his famous play and the right to use the name as the title of the picture. The gross receipts in the case at bar from the picture "Letty Lynton" were \$1,655,269.15, of which 8% would be about \$132,500. In my opinion the testimony before the special master would justify a finding in this case that the profits these defendants made from their use of complainants' play "Dishonored Lady" did not exceed 25% of the net profits from the picture, as hereinafter fixed, or, if a royalty basis should be used, 8% of the gross receipts. It requires no expert testimony to show that the use of complainants' play "Dishonored Lady" did not contribute the entire 100% of the net profits realized from the picture "Letty Lynton". Yet that is what this judgment gives the complainants.

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If we are "to avoid instances of grotesque injustice" then "we must adopt some working rule" similar to that employed in patent infringement cases. *Page Machine Co. v. Dow Jones & Co., supra.* A result such as we have in the present case may lead to the adoption of such a rule, either through the decision of an appellate court, giving a more reasonable interpretation of Section 25 of the Copyright Act, or by Congress amending the Act. *Jewell-LaSalle Realty Co. v. Buck*, 283 U. S. 202, 208.

At the hearings before the special master defendants claimed that "they should be allowed to deduct from any amount found . . . due the complainants as profits from

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"Letty Lynton" an amount which they claimed would be the equivalent of Federal income taxes at the rate of 14½% of such profits". The special master reported that there was not sufficient evidence before him from which he could find that the profits from the picture were "taxable profits" on which the defendants had actually paid a tax. He reported that if this issue had been satisfactorily met he would "have no difficulty in allowing the defendants \* \* \* to deduct \* \* \* the proper amount of income taxes". In support of his conclusion of law that the defendants were entitled to deduct the corporate income tax they paid on the "Letty Lynton" profits he cites the case of *Stromberg Motor Devices Co. v. Zenith-Detroit Corp.*, 73 F. (2d) 42. I think the following quotation from that case is in point and cites all the leading cases on the question (page 65):

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"Finally, the defendant insists that it should be allowed a deduction for federal income taxes paid and attributable to the profits derived from the infringing carburetors. Such taxes reduce the profits in a very real sense. But for them the profits the defendant would have retained would have been so much the greater. Whether in its accounting with the plaintiff it may be entitled to the deduction depends upon whether it willfully was infringing the Mock patent or not. *Larson Co. v. Wrigley Co.*, 277 U. S. 97, 48 S. Ct. 449, 72 L. Ed. 800. It did deliberately test this patent. It claimed it to be invalid and denied infringement. The issues raised were not without merit, as is made clear by the fact that it prevailed in the District Court and obtained a decree which we reversed on appeal. There was certainly a real controversy, and it would be a harsh rule which did not give the defendant the right to test the patent without being penalized on the accounting by what would be in effect punitive damages. We think the defendant's honest belief in its right to manufacture

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*Resettled Final Decree Appealed From.*

of the costs hereby allowed the complainants in the final decree to be entered herein.

Submit decree in accordance with this opinion on two days' notice.

Dated, December 29th, 1938.

VINCENT L. LEIBELL,  
United States District Judge.

**Resettled Final Decree Appealed From.**

At a Term of the District Court of the United States held in and for the Southern District of New York at the United States Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 23rd day of January, 1939.

Present—HON. VINCENT L. LEIBELL, *District Judge.*

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[SAME TITLE.]

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The complainants having moved for a resettlement of the decree heretofore made herein on January 6, 1939, and entered in the office of the Clerk of this Court on January 7, 1939,

Now, on reading the notice of resettlement herein, dated January 18, 1939, the affidavit of Edward J. Clarke, verified January 18, 1939, and the aforesaid decree dated January 6, 1939, it is

ORDERED AND ADJUDGED AND DECREED, that the decree dated January 6, 1939, and entered in the office of the Clerk of



*Resettled Final Decree Appealed From.*

this Court on the 7th day of January, 1939, be and the same hereby is resettled, so as to read as follows:

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"At a Term of the District Court of the United States, held in and for the Southern District of New York, at the United States Court House, Foley Square, in the Borough of Manhattan, City of New York, on the 6th day of January, 1939.

Present—HON. VINCENT L. LEIBER, *District Judge.*

In Equity No. E-69-218

EDWARD SHELDON and MARGARET AYER BARNES,  
Complainants,

3638

—against—

METRO-GOLDWYN PICTURES CORPORATION, METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION, LOEW'S, INC. and CULVER EXPORT CORPORATION,

Defendants.

An interlocutory decree having been made herein by Hon. John C. Knox, District Judge, under date of July 29, 1936, and filed in the office of the Clerk of this Court under date of July 31, 1936, and said interlocutory decree having appointed Gordon Auchincloss, Esq. as Special Master to ascertain and report the amount of complainants' damages herein, and the amount of gains and profits of the defendants and each of them, and the said Special Master having filed with this court a written report on the 9th day of May, 1938, and the complainants having filed exceptions to the said report, and the defendants having filed exceptions to the said report, and this cause having come on to be heard upon the report of said Special Master and upon the exceptions thereto, and O'Brien, Driscoll & Raftery, appear-

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*Resettled Final Decree Appealed From.*

3646 hereby fixed at the sum of \$59,570.63, and that Metro-Goldwyn Pictures Corporation is jointly liable with the said Metro-Goldwyn-Mayer Distributing Corporation therefor, and it is therefore ordered that the complainants are hereby given a judgment against Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation jointly, in the said sum of \$59,570.63, with interest from the 9th day of May, 1938; and it is further

3647 ORDERED, ADJUDGED AND DECREED that the profits made by Loew's, Inc. be and are hereby fixed at the sum of \$84,209.51, and that complainants are hereby given judgment against said Loew's, Inc. in said sum, with interest from the 9th day of May, 1938; and it is further

ORDERED, ADJUDGED AND DECREED that the profits made by Culver Export Corporation be and are hereby fixed at the sum of \$140,278.25, and that Metro-Goldwyn Pictures Corporation is jointly liable with the said Culver Export Corporation therefor, and therefore judgment is hereby given to the complainants against Metro-Goldwyn Pictures Corporation and Culver Export Corporation jointly in the sum of \$140,278.25, with interest from the 9th day of May, 1938; and it is further

3648 ORDERED, ADJUDGED AND DECREED that Gordon Auchincloss, Esq., as Special Master, be and is hereby allowed the sum of \$15,305, as compensation for the services rendered by him herein, plus \$265.06 for his disbursements, making a total of \$15,570.06, and the defendants herein are ordered and directed jointly to pay the said sum to the said Special Master within thirty days after the entry of this decree; and it is further

ORDERED, ADJUDGED AND DECREED that the complainants be and they hereby are allowed as attorneys' fees the sum of

*Resettled Final Decree Appealed From.*

\$55,000., and judgment therefor is decreed as part of the costs of this action; and it is further 3649

ORDERED, ADJUDGED AND DECREED that the complainants have judgment in the sum of \$1328.51 costs of Circuit Court of Appeals as taxed together with taxable costs and disbursements of this Court to be taxed by the Clerk; and it is further

ORDERED, ADJUDGED AND DECREED that the complainants have execution upon the respective sums awarded to them in accordance with the provisions hereof.

VINCENT L. LEIBELL,  
U. S. D. J.

3650

C.W.

VINCENT L. LEIBELL,  
U. S. D. J.

3651

*Resettled Final Decree Appealed From.*

640 ing herein as attorneys for complainants, by Arthur F. Driscoll, of counsel; J. Robert Rubin appearing as attorney for defendants Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation, by John W. Davis of counsel; Samuel D. Cohen, appearing as attorney for Culver Export Corporation, by John W. Davis as counsel; Leopold Friedman, appearing as attorney for Loew's, Inc. by John W. Davis of counsel, and after hearing counsel, and due deliberation had thereon, and the Court having filed its decision herein, it is

641 ORDERED, ADJUDGED AND DECREED, that the report of the Special Master be and is hereby confirmed, and the exceptions of the complainants and the exceptions of the defendants be and are hereby overruled except as follows:

Account of Defendant Metro-Goldwyn Pictures Corporation:

An item of \$610.76 (negative cost) should be included in the total of the negative cost of the picture and not as part of the general studio overhead as calculated by the special master.

642 An item of \$3,630.12, dues payable to the Motion Picture Producers and Distributors Association, based on percentage of the amount grossed by the picture, was a proper and customary charge, and should have been allowed as an item of cost. The same is true of a similar item of \$79.69.

Defendant's exception to the failure of the Special Master to allow a deduction of income taxes is sustained and from the account as restated by the Special Master there should also be deducted income taxes amounting to \$16,445.48.

The net profits to be accounted for by the Pictures Corporation after the above deductions will be \$248,095.09.

*Resettled Final Decree Appealed From.*

Account of Metro-Goldwyn-Mayer Distributing Corporation, Loew's, Inc. and Culver Export Corporation: 3643

These defendants are entitled respectively to a deduction of the sums they paid as corporate income taxes (as calculated by the parties in the stipulation herein dated November 14, 1938) from their net profits from the picture 'Letty Lynton' as restated by the Special Master in his report. The amount of these deductions or credits for income taxes paid are as follows:

Metro-Goldwyn-Mayer Distributing Corporation		\$9,032.79	3644
Loew's, Inc.	\$11,269.80		
Loew's foreign subsidiaries	1,987.37	13,257.17	
		<hr/>	
Culver Export Corporation		12,394.88	

After these deductions for income taxes, the net profits for which these three corporations are accountable are as follows:

Metro-Goldwyn-Mayer Distributing Corporation	\$59,570.63
Loew's, Inc.	84,209.51
Culver Export Corporation	140,278.25

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and it is further

ORDERED, ADJUDGED AND DECREED that the profits made by Metro-Goldwyn Pictures Corporation be and are hereby fixed at the sum of \$248,095.09, and that the complainants are hereby given judgment against said Metro-Goldwyn Pictures Corporation in said amount with interest from the 9th day of May, 1938; and it is further

ORDERED, ADJUDGED AND DECREED that the profits made by Metro-Goldwyn-Mayer Distributing Corporation be and are



*Opinion of Leibell, D. J.*

3616 \$2,876.10 received from the renting of films to the United States Navy. It is argued that the Copyright Act has no extraterritorial operation, unless otherwise provided (*American Code Co. v. Bensinger*, 282 Fed. 829, 833) and that therefore Culver should not be held to account except for the \$2,876.10. This argument overlooks the fact that the Culver Corporation is a domestic corporation and is a mere instrumentality or agency of the Pictures Corporation; that it has a place of business at Culver City, California, and also in New York City; that the infringing negatives were made at Culver City, California, and foreign versions thereof were sent abroad by the Culver Corporation to its foreign subsidiaries through which positive prints were made and distributed abroad for rental fees. A large part of the revenue thus received was actually paid to Culver as percentages by its foreign subsidiaries. Culver accounts for all the profits made by its foreign subsidiaries because Culver owns the entire capital stock of all those agencies of Culver, except the Swedish corporation in which Culver owns a substantial interest. As to the Swedish corporation, Culver accounts only for the part of the profits Culver received. The Culver Export Corporation was properly held to account for the profits if thus made abroad from the infringement Culver perpetrated, in part, in this country.

3618 Pursuant to Rule 66 of the old Equity Rules exceptions were filed by both sides to the special Master's ruling on numerous items contained in the account filed by defendants, showing their receipts from sales and leases of the picture "Letty Lynton" and the "elements of cost" claimed by them. After certain preliminary hearings before the Court on this motion, waivers of a number of the exceptions were filed so as to leave for determination only the basic objections and the larger items. I will now separately consider the account of each defendant as found and stated by the special master.

*Opinion of Leibell, D. J.*

Account of defendant, Metro-Goldwyn Pictures Corporation: 3619

All of complainants' exceptions that were not later waived are overruled and the rulings of the special master on the items involved are approved for the reasons stated in his report.

Defendant's exceptions, where not waived, are likewise overruled except as to the following:

An item of \$610.76 (negative cost) should be included in the total of the negative cost of the picture and not as part of the General Studio Overhead, as calculated by the special master. An item of \$3,630.12, dues payable to the Motion Pictures Producers and Distributors Association based on a percentage of the amount grossed by the picture: these "dues" were really for services rendered by the association to this producer as a member of the association. In my opinion the Association could properly refuse to refund the same. If the defendant did not pay, the Association would go unpaid so far as this picture is concerned. I believe it was a proper and customary charge and should have been allowed as an item of cost. The same is true of a similar item of \$79.69. 3620

Defendant's exception to the failure of the special master to allow a deduction of income taxes is sustained and from the account as restated by the special master there should also be deducted income taxes amounting to \$16,445.48. The net profits to be accounted for by the Pictures Corporation after the above deductions will be \$248,095.09. 3621

Account of Metro-Goldwyn-Mayer Distributing Corporation,

Loew's Inc. and  
Culver Export Corporation—

All exceptions (not waived) filed by either the complainants or the defendants to the report of the special master in

*Opinion of Leibell, D. J.*

3622 relation to these accounts and the rulings of the special master on disputed items contained therein, are overruled except that these defendants shall be entitled respectively to a deduction of the sums they paid as corporate income taxes (as calculated by the parties ~~for~~ the stipulation herein dated November 14, 1938) from their net profits from the picture "Letty Lynton", as restated by the special master in his report. The amounts of these deductions or credits for income taxes paid are as follows:

3623	Metro-Goldwyn-Mayer Distributing Corporation	\$ 9,032.79
	Loew's Inc.	\$11,269.80
	Loew's Foreign Subsidiaries	1,987.37 \$13,257.17
	Culver Export Corporation	\$12,394.88

After these deductions for income taxes the net profits for which these three corporations are accountable will be as follows:

3624	Metro-Goldwyn-Mayer Distributing Corporation	\$ 59,570.63
	Loew's Inc.	\$4,209.51
	Culver Export Corporation	\$140,278.25

The question has been raised as to the liability of the several defendants for the profits made by their co-defendants. Section 25 of the Copyright Act requires each infringer to account for the profits it received. The statute gives the complainant the right to recover those profits from that infringer, but no other infringer is jointly liable therefor. As to the damages sustained by a complainant through the infringement of his copyright, infringers who are joint tortfeasors are jointly liable.

\* In *International Radio Tel. Co. v. Atlantic C. Co.*, 290 Fed. 698, a patent infringement case, Judge Hough held

*Opinion of Leibell, D. J.*

that "there can be no recovery of profits from a defendant, except of profits that defendant made". This principle applies also to the copyright infringers in the case at bar. 3625

However, I am of the opinion that the Distributing Corporation and Culver Corporation were only the agents, instrumentalities or sub-divisions of the Pictures Corporation and that the Pictures Corporation should therefore be held liable not only for its own profits, but for the profits of the Distributing Corporation and the Culver Corporation, in both of which the Pictures Corporation owned the entire capital stock, controlling and using them as mere instrumentalities or adjuncts. *Owl Fumigating Corp. v. California Cyanide Co.*, 30 Fed. (2d) 812; *Industrial Research Corp. v. General Motors Corp.*, 29 Fed. (2d) 623; *United States v. Reading Co.*, 253 U. S. 26; *Chicago, M. & St. P. R. Co. v. Minneapolis C. & C. Assn.*, 247 U. S. 490. 3626

Although Loew's owned all the common stock of the Pictures Corporation and 10% of its preferred stock, the business of Loew's embraced several fields of activity in which the Pictures Corporation is not engaged. Further, about 90% of the preferred stock of the Pictures Corporation is owned by the general public. The evidence does not show that the Pictures Corporation was a mere instrumentality or agent of Loew's or a department of Loew's business. Loew's was properly required to account for the profits of the hundred odd theatres, operated by corporations in which it owned all the stock. 3627

The Distributing Corporation owned no stock of Culver Corporation nor did Culver Corporation own any stock of Distributing Corporation. It is true that all of the capital stock of both the Distributing Corporation and the Culver Corporation is owned by the Pictures Corporation, but that would be no basis for charging profits of the Distributing Corporation against the Culver Corporation or vice versa.

Loew's Inc. will not be held liable for the profits of the other defendants. The Pictures Corporation will not be

*Opinion of Leibell, D. J.*

28 held for the profits of Loew's. But the Pictures Corporation will be held severally liable for its own profits and also jointly liable with the Distributing Corporation and the Culver Corporation for their respective profits.

The findings of fact and conclusions of law made by the special master, except as herein modified or rejected, are hereby adopted by this Court, and the special master's report is approved, with the exceptions herein indicated.

Two applications for allowances have been made, one by the special master, who requests the sum of \$20,000, the other by the attorneys for the successful complainants, who ask for \$135,000.

29 The special master groups his services as follows:—(a) Hearings he held at his office before March 1, 1937, and his preliminary work on the issues involved in the action—38 hours. (b) His trip to Culver City, California, and the hearings he held there, all of which took sixteen days of his time. He left New York on February 25, 1937; the hearings at Culver City, California, began March 1, 1937 and ended March 8th; he left California on his return trip to New York on March 9th. (c) Hearings he held in his office after his return from California, twenty-two hearings totaling forty-four hours. (d) The time spent in preparing his report—241 hours.

30 Excluding the trip to California and the taking of testimony there, the special master, as set forth in subdivisions (a), (c) and (d), spent 323 hours on this reference. At the rate of \$35.00 an hour (*Newton v. Consolidated Gas Co.*, 259 U. S. 104) this would total \$11,505.00. For his time and services in going to California and taking testimony there (subdivision b), I am of the opinion that he should be allowed \$4,000, at the rate of \$250.00 a day for the sixteen days that he was away from New York. His total allowance is fixed at \$15,505.00, which the defendants are ordered to pay within thirty days after the entry of a final decree herein.



*Opinion of Leibell, D. J.*

The attorneys for the complainants divide their requested allowance into two parts—\$100,000 for the services rendered in the District Court and \$35,000 for the services rendered in the Circuit Court of Appeals. 3631

I have concluded that a proper allowance for all their services in this matter from the time that they were first consulted by their clients down to and inclusive of the entry of a final decree herein would be the sum of \$55,000.00, computed as follows:—\$10,000 for services rendered prior to the trial of the action; \$5,000 for the trial, briefs and the argument; \$10,000 (a) for services on the appeal to the Circuit Court of Appeals and for opposing in that Court two applications for a re-hearing and (b) for filing briefs in opposition to the defendants' application to the United States Supreme Court for a writ of certiorari; \$22,500 for their services in the accounting proceeding before the special master; and \$7,500 for their services in preparing exceptions to the special master's report, in preparing briefs on this motion, for attendance and argument at hearings on the exceptions and for the entry of a final decree herein. This allowance is, in my opinion, a reasonable attorney's fee (*United States v. Equitable Trust Co.*, 283 U. S. 738), to be allowed the complainants for the services of their attorneys, pursuant to the provisions of the Copyright Act, 17 U. S. C. A. §40, and as directed by the Circuit Court of Appeals in its mandate herein. *Sheldon v. Metro-Goldwyn Pictures Corporation*, 81 F. (2d) 49, 56. 3632 3633

"In determining what is a reasonable fee for an attorney, the elements to be considered, among others, are the amount involved, for that measures the attorneys' responsibility; the amount of work necessary; the amount of work done; the skill used, and the result". *Lewys v. O'Neill*, 49 F. (2d) 603. See, also, *Barilla v. Brunswick Balke Colender Co.*, 94 F. (2d) 567.

The allowance of \$55,000.00 to the complainants as a reasonable fee for their attorneys, shall be included, as part

**Defendants' Petition for Appeal and Order  
Allowing Appeal.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In Equity No. E-69-218.

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EDWARD SHELDON and MARGARET AYER BARNES,  
Complainants,

—against—

METRO-GOLDWYN PICTURES CORPORATION, METRO-GOLDWYN-  
MAYER DISTRIBUTING CORPORATION, LOEW'S, INC. and  
CULVER EXPORT CORPORATION,

Defendants.

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*To the Honorable Samuel Mandelbaum, One of the Judges  
of the United States District Court for the Southern  
District of New York;*

The defendants Metro-Goldwyn Pictures Corporation, Metro-Goldwyn-Mayer Distributing Corporation, Loew's Incorporated, sued herein as Loew's, Inc., and Culver Export Corporation, feeling aggrieved by the final decree rendered in the above-entitled cause and filed and entered on the 7th day of January, 1939, and filed and entered, as resettled herein, on the 23rd day of January, 1939, do hereby appeal from said final decree to the United States Circuit Court of Appeals for the Second Circuit for the reasons set forth in the Assignment of Errors filed herewith, and pray that said appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit

*Defendants' Petition for Appeal and Order Allowing Appeal.*

Court of Appeals under the rules of such Court in such cases made and provided. 3655

And your Petitioners further pray that an order of supersedeas may be entered herein pending the final disposition of the cause and that, subject to the consent of the complainants, the deposit of United States Government securities for the account of the complainants with the Empire Trust under an escrow agreement dated March 9, 1939, to secure the payment of any amounts finally adjudged herein to be owing by the defendants to the complainants shall take the place of the usual supersedeas bond.

J. ROBERT RUBIN,

Attorney for defendants Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation. 3656

LEOPOLD FRIEDMAN,

Attorney for defendant Loew's, Inc.

SAMUEL D. COHEN,

Attorney for defendant Culver Export Corporation. 3657

The foregoing appeal is hereby allowed and upon the consent of the complainants hereto subjoined, it is ordered that the escrow agreement described in such consent shall operate with the same force and effect as the usual supersedeas bond and shall stay the enforcement of the final decree of this Court and the issuance of execution thereunder, and also as security for the payment by the defendants of costs and damages on appeal.


Dated: New York, N. Y., March 27th, 1939.

SAMUEL MANDELBAUM,

District Judge.

**MICRO CARD**

**22**

TRADE MARK 

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**1419**

**65**



*Defendants' Assignment of Errors.*

16.

The Court in disposing of said motion erred in its decision that

"the only cases in which the 'in lieu thereof' provision applies are those where the rules of law render difficult or impossible proof of damages or discovery of profits."

17.

The Court in disposing of said motion erred in its decision that there is

"no discretion resting with the trial court, on the present state of the law, to substitute its own views of what should be the amount of plaintiffs' judgment in lieu of the actual net profits made by the defendants."

18.

The Court in disposing of said motion erred in its decision that the Court in this case was bound by the decision of the United States Circuit Court of Appeals, Second Circuit, in the case of *Dam v. Kirk La. Shelle Co.*, 179 Fed. 903, at page 908.

19.

The Court in disposing of said motion erred in its decision that under the wording of the Copyright Act of 1909, Sec. 25 (b), as interpreted by the decisions of the appellate courts, the Court did not have the power to apply in a copyright case the rule for apportioning profits which is followed in patent infringement cases, by the



*Defendants' Assignment of Errors.*

determination and allowance to the complainants only of such portion of the entire profits as was wholly or principally attributable to such use as was made by the defendants in the preparation or production of the defendant's motion picture "Letty Lynton" of any portion of the plaintiffs' play "Dishonored Lady" protected by the plaintiffs' copyright in such play, as distinguished from the determination and allowance to the complainants of the entire net profits realized by the defendants from the production, distribution and exhibition of said motion picture "Letty Lynton." 3679

20.

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The Court in disposing of said motion erred in its decision in its allowance to the plaintiffs of the entire net profits realized by the defendants from the production, distribution and exhibition of defendants' motion picture "Letty Lynton" in spite of its holding that

"An allowance to complainants of 25% of the net profits, as restated, or about \$133,000 would be such a sum as could be justly fixed as a limit beyond which complainants would be receiving profits in no way attributable to the use of their play in the production of the picture."

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21.

The Court in disposing of said motion erred in its decision that under Section 25(b) of the Copyright Act of 1909, it could not apportion the entire net profits realized from the production, distribution and exhibition of the motion picture "Letty Lynton" by a determination and allowance to the complainants only of such portion of such profits as were wholly or principally attributable to the use made by the defendants in the preparation or produc-

*Defendants' Assignment of Errors.*

3658 The complainants hereby acknowledge the deposit by the defendants for the account of the complainants with the Empire Trust Company of 120 Broadway, New York City under an escrow agreement dated March 9, 1939, of United States Government securities in principal amount and under terms and conditions satisfactory to the complainants and hereby consent that such deposit shall operate with the same force and effect as the usual supersedeas bond, and that in allowing the foregoing appeal the Court may order that such escrow deposit shall stay the enforcement of the final decree of this Court and the issuance of execution thereunder, and also as security for the payment by the defendants of costs and damages on appeal.

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O'BRIEN, DRISCOLL & RAFTERY,  
Attorneys for Complainants.

**Defendants' Assignment of Errors.**


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[SAME TITLE.]

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Now come the defendants Metro-Goldwyn Pictures Corporation, Metro-Goldwyn-Mayer Distributing Corporation, Loew's Incorporated and Culver Export Corporation, in the above-entitled cause, and file the following Assignment of Errors upon which they will rely in the prosecution of the appeal herewith petitioned for in said cause from the final decree of this Court made on January 6, 1939 and entered on January 7, 1939, as resettled and entered on January 23, 1939.

The following errors are assigned on behalf of all the defendants:

*Defendants' Assignment of Errors.*

1.

3661

The Court in its interlocutory decree of July 29, 1936, signed by the Honorable John C. Knox, District Judge, erred in that said decree is not in accordance with the opinion of the United States Circuit Court of Appeals, Second Circuit, filed January 17, 1936, nor in accordance with the mandate of said Court, dated February 5, 1936.

2.

The Court erred in providing in said interlocutory decree that

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"complainants recover of the defendants and each of them all damages sustained by them and that the complainants recover of the defendants and each of them all gains and profits made by the defendants and each of them because of the said infringement upon complainants' copyright by copying said dramatic composition or by making the said motion picture 'LETTY LYNTON' and by their use and trafficking in, or in any manner dealing with the said motion picture 'LETTY LYNTON', or in any rights thereto or by giving public performances thereof, or causing, licensing, aiding and abetting or in any other manner assisting in the giving of public performances thereof, or in any other way, form or manner whatsoever"

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in so far as said decree is subject to the construction that it provides for the recovery by the complainants from the defendants of all gains and profits made by them from the production, distribution and exhibition of the motion picture Letty Lynton, and that it does not limit the gains and profits so to be recovered to all such gains and profits as were made by the defendants from the use in the preparation or production of such motion picture of any

*Defendants' Assignment of Errors.*

3670 poration be fixed at the sum of \$59,570.63, and that the defendant Metro-Goldwyn Pictures Corporation be held jointly liable with said Metro-Goldwyn-Mayer Distributing Corporation therefor, and that complainants be given judgment against said Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation jointly in said sum of \$59,570.63 with interest thereon from May 9, 1938.

## 9.

3671 The Court, in said final decree, erred in adjudging that the profits made by Loew's Incorporated be fixed at the sum of \$84,209.51, and that complainants be given judgment against said defendant in said sum of \$84,209.51 with interest thereon from May 9, 1938.

## 10.

3672 The Court, in said final decree, erred in adjudging that the profits made by Culver Export Corporation be fixed at the sum of \$140,278.25, and that Metro-Goldwyn Pictures Corporation be held jointly liable with said Culver Export Corporation therefor, and that complainants be given judgment against said Metro-Goldwyn Pictures Corporation and said Culver Export Corporation jointly in said sum of \$140,278.25 with interest from May 9, 1938.

## 11.

That the Court, in said final decree, erred in decreeing that the compensation of Gordon Auchincloss as Special Master, allowed by the Court in the sum of \$15,305 as compensation for services rendered by him, should be paid by the defendants to the Special Master within thirty days after entry of the decree.

*Defendants' Assignment of Errors.*

12.

3673

The Court, in said final decree, erred in decreeing that complainants be allowed as attorneys' fees the sum of \$55,000, and in decreeing judgment for said sum as part of the costs of this action.

13.

The Court, in said final decree, erred in decreeing that the complainants have judgment in the sum of \$1,328.51 as costs of the Circuit Court of Appeals as taxed, together with taxable costs and disbursements in the District Court to be taxed by the Clerk thereof.

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14.

The Court in disposing of said motion erred in its decision that

"There can be no apportionment of the profits of the infringing composition based upon a comparison of what was plagiarized with what was not."

15.

The Court in disposing of said motion erred in its decision that 3675

"Under the decisions of the Supreme Court and of the Circuit Court of Appeals in this circuit, as hereinafter discussed, the trial court may not award statutory damages 'in lieu of actual damages and profits' where there is satisfactory proof of the copyright owner's actual damages or of the infringer's actual profits."



*Defendants' Assignment of Errors.*

tion of the motion picture "Letty Lynton" of any portion of the play "Dishonored Lady" protected by the plaintiffs' copyright in such play.

## 22.

The Court in disposing of said motion erred in its decision that under Section 25(b) of the Copyright Act of 1909, and particularly under what are called the "in lieu" provisions of said section, it had no power under all the circumstances of this case, in lieu of actual damages and profits, to make an award to the plaintiffs of

"such damages as to the Court shall appear to be just."

## 23.

The Court in disposing of said motion erred in its decision that the plaintiffs were entitled to recover from the defendants all the net profits of the motion picture "Letty Lynton" in spite of its finding that such award was "punitive and unjust", and that

"The rule for apportioning profits followed in patent infringement cases, should not be difficult of application to copyright infringement cases"

and that

"If we are to avoid instances of grotesque injustice then we must adopt some working rule similar to that employed in patent infringement cases."

## 24.

The Court in disposing of said motion erred in its decision that defendants Metro-Goldwyn-Mayer Distributing

*Defendants' Assignment of Errors.*

Corporation and Culver Export Corporation respectively 3685  
 were only agents, instrumentalities, or subdivisions of the  
 defendant Metro-Goldwyn Pictures Corporation, and that  
 the defendant Metro-Goldwyn Pictures Corporation should,  
 therefore, be held liable not only for its own profits but  
 as well for the profits of the defendants Metro-Goldwyn-  
 Mayer Distributing Corporation and Culver Export Cor-  
 poration.

## 25.

The Court in disposing of said motion erred in its de-  
 cision that defendant Loew's Incorporated

"was properly required to account for the profits of  
 the hundred odd theatres, operated by corporations  
 in which it owned all the stock."

3686

in that (1) the evidence does not show that any of said  
 theatre corporations were or are agents or instrumental-  
 ities of defendant Loew's Incorporated, and (2) that the  
 uncontradicted evidence shows that Loew's Incorporated  
 was not the owner of all the capital stock in the 103  
 theatre corporations which exhibited the motion picture  
 "Letty Lynton", but that as appears from defendants' Ex-  
 hibit L-1, the following are the facts in this regard:

Defendant Loew's Incorporated was the owner of all the  
 capital stock in 48 of said theatre corporations, and in the  
 case of 27 of said theatre corporations was only a partial  
 owner of stock, its interest therein varying from 86.71%  
 to 10.7%, and in respect of 6 of such latter corporations,  
 there were outstanding in the hands of the public issues of  
 preferred stock which ranked ahead of the common stock  
 held by Loew's; in the case of an additional 20 of said  
 theatre corporations, Loew's ownership of stock which was  
 in varying amounts from 100% to 331 $\frac{1}{3}$ % of such ownership  
 was only through one or two intermediate corporations,

3687

*Defendants' Assignment of Errors.*

64 portion of the play Dishonored Lady protected by the complainants' copyright in such play.

## 3.

The Court erred in providing in said interlocutory decree for a reference to Gordon Auchincloss, Esq., as Special Master,

"to ascertain and report the amount of complainants' damages herein and the amount of such gains and profits of the defendants and each of them"

65 in so far as it is subject to the construction that the Master is directed thereby to ascertain and report the amount of all gains and profits made by the defendants from the production, distribution and exhibition of the motion picture Letty Lynton, and that it does not direct him to ascertain and report only the amount of all such gains and profits as were made by the defendants from the use in the preparation or production of such motion picture of any portion of the play Dishonored Lady protected by the complainants' copyright in such play.

## 4.

66 The Court erred in providing in said interlocutory decree for a direction to the Special Master to ascertain and report the amount of all gains and profits made by the defendants from the production, distribution and exhibition of the motion picture Letty Lynton, in so far as it is subject to the construction that he is not directed or authorized by such decree to apportion the said gains and profits as between the contribution made by the complainants thereto by the use made by the defendants in the preparation or production of said motion picture of any portion of the play Dishonored Lady protected by the complainants'

*Defendants' Assignment of Errors.*

copyright in such play and the contributions made by the defendants, or any of them, in the preparation, production and distribution of such motion picture. 3667

## 5.

The Court, in said interlocutory decree, erred in failing to provide that in case the Special Master should find that under the circumstances of the case the rules of law should render difficult or impossible the ascertainment of such amount of the gains and profits made by the defendants from the production, distribution and exhibition of the motion picture Letty Lynten as were attributable to the use made by them of any portion of the play Dishonored Lady protected by the complainants' copyright in such play in the preparation or production of such motion picture Letty Lynton, he was empowered to report in lieu of actual damages and profits such damages as to the Court or the Special Master should appear to be just. 3668

## 6.

The Court, in said final decree, erred in confirming the report of the Special Master subject only to the modification thereof as provided in said final decree.

## 7.

The Court, in said final decree, erred in adjudging that the profits made by Metro-Goldwyn Pictures Corporation be fixed at the sum of \$248,095.09, and that complainants be given judgment against said defendant in said sum of \$248,095.09 with interest thereon from May 9, 1938. 3669

## 8.

The Court, in said final decree, erred in adjudging that the profits made by Metro-Goldwyn-Mayer Distributing Cor-

*Defendants' Assignment of Errors.*

3688 and that in the case of the remaining 8 theatre corporations, Loew's Incorporated had no stock interest whatever, but merely the right to receive compensation measured by profits under management agreements with the several owners of said theatres.

26.

3689 The Court in disposing of said motion erred in its decision that the defendant Metro-Goldwyn Pictures Corporation should be held jointly liable with the defendant Metro-Goldwyn-Mayer Distributing Corporation and the defendant Culver Export Corporation for the profits made by such latter defendants respectively.

27.

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his failure or refusal to find that the commercial value of the motion picture "Letty Lynton" is not wholly or principally attributable to such use in the preparation or production of such motion picture as was made by the defendants of any portion of the play "Dishonored Lady," protected by the plaintiffs' copyright in such play.

3690

28.

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his failure or refusal to find that at the utmost not more than 10% of the total net profits made by the defendants from the preparation, production, distribution and exhibition of the motion picture "Letty Lynton" was made because of the infringement by defendants of plaintiffs' copyright in the play "Dishonored Lady."



*Defendants' Assignment of Errors.*

29.

3691

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his failure or refusal to find that prior to the exhibition of the motion picture "Letty Lynton" and starting from May 1, 1931, the defendant Metro-Goldwyn-Mayer Distributing Corporation entered into contracts for its exhibition with individual exhibitors on the printed form of contract which is Defendants' Exhibit No. 16, in which contracts the motion picture, later designated as "Letty Lynton," was designated simply as "Production Number 208, Joan Crawford No. 2;" such motion picture was not otherwise designated, nor identified in fact by the title "Letty Lynton" until on or about May 7, 1932, when the motion picture so entitled was released; before May 7, 1932, 7315 contracts with individual exhibitors out of a total of 7666 of such contracts as listed on Defendants' Exhibit No. 15 had been made and executed by said defendant Metro-Goldwyn-Mayer Distributing Corporation.

3692

30.

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his failure or refusal to find that the commercial value of the motion picture "Letty Lynton" is principally attributable to the stars, Joan Crawford and Robert Montgomery, who played the leading roles therein, to the production and direction of the said motion picture by persons well known in the industry and to the public and to the reputation of the Metro-Goldwyn-Mayer organization.

3693

31.

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his

*Defendants' Assignment of Errors.*

- 3694 failure or refusal to find that in a certain agreement made by and between the plaintiffs and others with Metro-Goldwyn-Mayer Corporation, dated April 17, 1931, it was agreed that contingent upon Metro-Goldwyn-Mayer Corporation being able to secure the approval of the Hays' Office of the use of the play "Dishonored Lady" for motion picture purposes within 30 days therefrom, Metro-Goldwyn-Mayer Corporation would purchase from the plaintiffs the moving picture rights in such play "Dishonored Lady," and that upon such purchase the price to be paid for said rights under said agreement would be the sum of \$30,000; said Hays' Office refused to give its approval to the use of the play for motion picture purposes after application made to secure such approval.
- 3695

## 32.

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his failure or refusal to find that the only means open to the plaintiffs for the exploitation of their copyrighted play "Dishonored Lady" by production thereof in motion pictures was by selling the motion picture rights therein to some established motion picture producing organization.

3696

## 33.

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his failure or refusal to find that the market value of the motion picture rights in the play "Dishonored Lady" in the years 1931 and 1932 was not more than \$30,000.

## 34.

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his

*Defendants' Assignment of Errors.*

failure or refusal to find that each of said defendants was organized at a time prior to the plaintiffs' production or copyright of the play "Dishonored Lady" with separate and distinct charters, boards of directors and officers, with separate and distinct purposes and functions, and with no purpose on the part of said defendants, or any of them, that their respective organizations, functions or operations would in any respect affect any acts or transactions of said defendants, or any of them, having anything whatever to do with plaintiffs' play "Dishonored Lady" or any use which might be made by the defendants, or any of them, of said play in the production, distribution or exhibition of the motion picture "Letty Lynton."

3697

3698

35.

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his failure or refusal to find that the acts done or performed by the defendants, or any of them, in the exploitation or handling of the motion picture "Letty Lynton" were done or performed in the same manner and in accordance with the same practice and routine as were followed in the exploitation and handling of other productions of the defendants which involved no questions as to the rights of the defendants, or of any of them, to produce, distribute or exhibit the same.

3699

36.

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his failure or refusal to find that the actual damages sustained by plaintiffs because of the infringement by defendants of plaintiffs' copyright in the play "Dishonored Lady" were \$30,000.

*Defendants' Assignment of Errors.*

37.

The Court erred in overruling the exception taken by the defendants to the Special Master's report because of his failure or refusal to find that the damages which in the opinion of the Special Master is just to award plaintiffs, in lieu of actual damages and profits, is \$30,000.

38.

The Court erred in overruling the exception taken to the Special Master's report on the ground of his failure or refusal to make any finding as to the actual damages sustained by plaintiffs because of the infringement by defendants of plaintiffs' copyright in the play "Dishonored Lady."

39.

The Court erred in overruling the exception taken on behalf of defendants to the introductory portion of the Special Master's report (pp. 2, 3 thereof) which shows that for the purposes of the proceedings before him he construed the interlocutory decree of July 29, 1936 as limiting his powers thereunder strictly to a determination of the total net profits derived by the defendants from the production, distribution and exhibition of the picture "Letty Lynton," and as precluding him thereunder from making an apportionment as between such amount of the total net profits as were made "because of the infringement" and such amount thereof as are properly ascribable to such portions and features of the literary material of the film play "Letty Lynton" as were not taken from the copyrighted play "Dishonored Lady," and also such amount thereof as is properly ascribable to the stars, Joan Crawford and Robert Montgomery, who played the leading roles therein, to the production and direction of the said motion picture by persons

*Defendants' Assignment of Errors.*

well known in the industry and to the public and to the reputation of the Metro-Goldwyn-Mayer organization; and to his failure in fact to make such apportionments. 3703

40.

The Court erred in overruling the exception taken on behalf of defendants to the introductory portion of the Special Master's report (pp. 2, 3 thereof), which shows that for the purposes of the proceedings before him he construed the interlocutory decree of July 29, 1936, as limiting his powers thereunder strictly to a determination of the total net profits derived by the defendants from the production, distribution and exhibition of the picture "Letty Lynton," and as precluding him from making an award thereunder, in lieu of actual damages and profits, of such damages as to him appeared to be just; and to his failure in fact to make such an award in lieu of actual damages and profits. 3704

41.

The Court erred in overruling the exception taken on behalf of defendants to the Special Master's report by reason of his failure or refusal to make any comparison of the continuity of the motion picture "Letty Lynton", the play "Dishonored Lady", the "Trial of Madeleine Smith", and the novel "Letty Lynton" (marked respectively Defendants' Exhibits R-4, R-3, R-2, and R-5) and the motion picture "Letty Lynton" as actually exhibited to the Special Master, with a view to determining the nature and the extent of the infringement by defendants' motion picture "Letty Lynton" of the complainants' copyrighted play "Dishonored Lady" for the purpose either of apportionment of profits or of making an award of such damages as to him should appear to be just, in lieu of actual dam- 3705



*Defendants' Assignment of Errors.*

706 ages and profits; and to his failure in fact to make such a determination.

The following errors are assigned on behalf of the defendant Metro-Goldwyn Pictures Corporation (hereinafter called Pictures Corporation) in relation to the Court's rulings upon exceptions taken to that portion of the Special Master's report having to do with this defendant's accounting.

42.

707 The Court erred in overruling the exception taken to the ruling in Paragraph 2 of said portion of the Special Master's report, which disallows as the Pictures Corporation's share of the distributing expense, which "Letty Lynton" should be charged with, the sum of \$12,505.33 based on the relation of costs of distribution to gross receipts, and which allows in place thereof only the sum of \$8,517.48, upon the theory that all feature pictures distributed during the fiscal year 1932 should bear an equal share of the total distributing expense of the Pictures Corporation for such year for all pictures, and to the portions of Paragraphs 3-10 under the accounting of the defendant Metro-Goldwyn-Mayer Distributing Corporation, which state the reasons for such allowance, and to the findings in Paragraphs 9 and 10 thereof, that during such fiscal year the defendant's Pictures Corporation and Distributing Corporation distributed the equivalent of sixty (60) feature pictures, and accordingly excepts to all changes of figures in such accounting based on the rulings herein specified.

43.

708 The Court erred in overruling the exception taken to the ruling in Paragraph 5 of said portion of the Special Master's report, which disallows as an item of negative

*Defendants' Assignment of Errors.*

cost the sum of \$2,500.00 listed as a departmental overhead charge of the Women's Wardrobe Department, and to the ruling in Paragraph 25 thereof, which purports to compensate for such disallowance merely by adding to General Studio Overhead the total overhead charges for this department of \$76,334.90. 3709

44.

The Court erred in overruling the exception taken to the ruling in Paragraph 26 of said portion of the Special Master's report, which disallows as an item of General Studio Overhead the sum of \$500,000. as "Addition to Reserve for Continuities" (Defendants' Exhibit 18-D5). 3710

45.

The Court erred in overruling the exception taken to the ruling in Paragraph 28 of said portion of the Special Master's report, which disallowed as an item of General Studio Overhead the sum of \$922,141.09 as "Compensation paid to Louis B. Mayer Pictures" (Defendants' Exhibit 18-D5).

46.

The Court erred in overruling the exception taken to the ruling in Paragraph 31 of said portion of the Special Master's report, which disallows as an item of General Studio Overhead the sum of \$1,559,559.79 as "Interest paid (per Exhibit 10)" (Defendants' Exhibit 18-D5). 3711

47.

The Court erred in overruling the exception taken to the ruling in Paragraph 34 of said portion of the Special Master's report, which disallows the defendants' claim that

*Defendants' Assignment of Errors.*

3712 for the purpose of computing what portion of the General Studio Overhead should be borne by "Letty Lynton", the total amount of such General Studio Overhead should be divided by 36 (approximately), as representing the number of pictures made at the Culver City Studio during the fiscal year 1932, as shown on Defendants' Exhibit C-25, and which instead apportions such General Studio Overhead on the relation which the costs and labor used in the making of "Letty Lynton" bear to the costs and labor used in the making of all pictures made at the said Studio during such fiscal year, and further excepts to the method adopted by the Special Master in arriving at a ratio on the basis stated by using as a numerator purporting to be the costs and labor used in the making of "Letty Lynton" a figure eliminating foreign version costs and labor, actually expended or used at the Studio, and by using as a denominator a figure which included not only the costs and labor used in the making of all pictures at the Studio during such fiscal year but also the costs and labor expended and used in the making of all foreign versions, including the "Letty Lynton" foreign versions.

3713 The following errors are assigned on behalf of the defendant Metro-Goldwyn-Mayer Distributing Corporation (hereinafter called Distributing Corporation) in relation to the Court's rulings upon exceptions taken to that portion of the Special Master's report having to do with this defendant's accounting:

48.

3714 The Court erred in overruling the exception taken on behalf of the defendant Distributing Corporation to the ruling in Paragraphs 8 and 10 of said portion of the Special Master's report, which disallows as the Distributing Corporation's share of the distributing expense, which "Letty Lynton" should be charged with, the sum of

*Defendants' Assignment of Errors.*

\$111,777.26, based on the relation of costs of distribution to gross receipts, and to the ruling in Paragraph 15 of said portion thereof, which allows in place thereof only the sum of \$76,657.35, upon the theory that all feature pictures distributed during the fiscal year 1932 should bear an equal share of the total distributing expense of the Distributing Corporation for such year for all pictures, and to the portions of Paragraphs 3-10 thereof which state the reasons for such allowance, and to the findings in Paragraph 9 and 10 of said portion thereof, that during such fiscal year the defendants Pictures Corporation and Distributing Corporation distributed the equivalent of sixty (60) feature pictures, and accordingly excepts to all changes of figures in such accounting based on the rulings herein specified. 3715

The following errors are assigned on behalf of the defendant Loew's Incorporated (hereinafter called Loew's) in relation to the Court's rulings upon exceptions taken to that portion of the Special Master's report having to do with this defendant's accounting: 3716

## 49.

The Court erred in overruling the exception taken on behalf of defendant Loew's to the Special Master's report because of his refusal to rule that Loew's fully discharged its liability to account herein by submitting upon the Accounting Defendants' Exhibit L-1, whereby it was shown that Loew's received no profits or gains from the exhibition of the film play "Letty Lynton", (its liability to account under such decree being limited to profits or gains from exhibition only) and whereby it was shown that all exhibitions of the film play "Letty Lynton" were made by corporations, not parties to this suit, and to the action of the Special Master, over the objections and exceptions stated in the record at various places (including, but without limi- 3717

*Defendants' Assignment of Errors.*

718 tation, pp. 626 to 660, S. M. N. Y. J., which exceptions are herewith repeated and renewed, in requiring the submission herein of separate accounts on behalf of each corporation which exhibited "Letty Lynton" in which Loew's had a stock interest; regardless of whether such stock interest was in whole of the stock or in only a part, and regardless of whether Loew's owned such stock interest directly or through one or more intermediate corporations and, in the case of the eight theatres listed on Defendants' Exhibit L-12, regardless of the absence of all stock interest; and this exception is hereby renewed and repeated as to each of the corporations whose accounts are set forth on any of the Defendants' Exhibits L-6 to L-13, both inclusive, and as to each and every finding of the Special Master predicated upon said accounts separately or collectively; and to each and every ruling imposing any liability upon Loew's to account to the plaintiffs herein for profits.

## 50.

20 The Court erred in overruling the exception taken on behalf of defendant Loew's to the Special Master's report because of his finding in Paragraph 5 of said portion thereof, that the defendant Loew's is accountable to the complainants for the gains and profits accruing to it through the exhibition of "Letty Lynton" by the theatres owned by the corporations listed on Defendants' Exhibit L-1, in which Loew's had only a stock interest, and to the finding therein that Loew's, acting through its so-called managing agency, the Marcus Loew Booking Agency, used these corporations as agents for the exhibition of the pictures produced by the production agency of the Loew's organization.

## 51.

The Court erred in overruling the exception taken on behalf of defendant Loew's to the Special Master's report



*Defendants' Assignment of Errors.*

because of his ruling in Paragraph 14 of said portion thereof, in respect of the theatres which exhibited "Letty Lynton" for a period less than a full week, which disallows the claim of Loew's that the weekly overhead for each of such theatres, as shown on Exhibits L-7, L-9, L-11 and L-13, should be apportioned in the ratio of the gross receipts during the period when "Letty Lynton" was exhibited to the gross receipts for the entire week, and which allows the claim of the complainants that such total weekly overhead should be divided by seven and multiplied by the number of days during which "Letty Lynton" was exhibited, and to all findings and to all changes in figures in the accounts submitted by defendants based on the ruling in Paragraph 14 of the report. 3721 3722

52.

The Court erred in overruling the exception taken on behalf of defendant Loew's to the ruling in Paragraph 15 of said portion of the Special Master's report, which disallows the claim of Loew's that the net profits of the theatre corporations shown on defendants' Exhibits L-6, L-8, L-8+, L-10 and the theatres shown on defendants' Exhibit L-12, should be apportioned on the basis of ascribing one-third thereof to the other attractions which were exhibited at said theatres during the period when "Letty Lynton" was also exhibited, and to the ruling made in favor of the complainants, which makes no apportionment of the net profits but which ascribes all the net profits of such theatres, after allowance only of the actual costs of the other attractions, to the exhibition of the motion picture "Letty Lynton". 3723

53.

The Court erred in overruling the exception taken on behalf of defendant Loew's to the restatements of the ac-

*Defendants' Assignment of Errors.*

3724 counts contained in Paragraph 17. of said portion of the Special Master's report, in so far as the same is based on rulings to which exceptions had already been taken herein in behalf of the defendant Loew's and the compilations therein contained made to take the place respectively of defendants' Exhibits L-6, L-8, L-8+, L-10 and L-12.

The following errors are assigned on behalf of the defendant Culver Export Corporation (hereinafter called Culver) in relation to the Court's rulings upon exceptions taken to that portion of the Special Master's report having to do with this defendant's accounting:

## 54.

3725 The Court erred in overruling the exception taken on behalf of defendant Culver to the refusal of the Special Master to rule that, except as to film rental income in the sum of \$2,876.40, shown "Film Rental Income-Direct" on Defendants' Exhibit 20 and received "from the United States Navy, or steamship lines which Culver sold direct instead of through a subsidiary" (S. M. N. Y. p. 452), Culver was not accountable in this suit, all receipts by Culver having been realized from distribution of the picture "Letty Lynton" outside of the territory to which the Copyright Laws of the United States extend and through stock interest in corporations engaged in the distribution of "Letty Lynton" outside of such territory, and to the action of the Special Master in overruling the objections and exceptions taken on behalf of Culver (including, but without limitation, pp. 443 to 447, S. M. N. Y.) to the inclusion of any profits and gains by Culver in the accounting in this suit and to each and every finding of the Special Master predicated upon the accounts of the corporations in which Culver had a stock interest, and upon said accounts separately and collectively, and to each and every ruling imposing any liability upon Culver to account to the plaintiffs for gains or profits realized by said corporations.

3726

*Defendants' Assignment of Errors.*

55.

3727

The Court erred in overruling the exception taken on behalf of defendant Culver to the ruling in Paragraph 4 of said portion of the Special Master's report that Culver was simply an agency used for the purpose of handling the foreign business of distribution and exhibition of Loew's, Inc. pictures in any such sense as to justify the finding that Culver has not in all respects a corporate entity distinct from that of the defendant Loew's or from that of the other corporations defendants.

56.

3728

The Court erred in overruling the exception taken on behalf of defendant Culver to the ruling in Paragraph 5 of said portion of the Special Master's report, that the foreign corporations whose stock was owned by Culver were merely agents, used by Culver for the distribution and exhibition of pictures in the various countries in which they were incorporated, and to the Special Master's failure to find that each of said corporations was a separate and distinct entity, and to the failure of the Special Master to rule that the various foreign companies were entitled to retain the full amount payable to them for distribution under their respective contracts with Culver.

57.

3729

The Court erred in overruling the exception taken on behalf of the defendant Culver to the ruling in Paragraph 6 of said portion of the Special Master's report, that the central control and direction of these foreign corporations rested in the executive offices of Culver located at 1340 Broadway, New York City, that is, in the general New York offices of Loew's, in any such sense as to justify the finding as to each of any of said corporations that their gains or profits derived wholly from the distribution or exhibition of the picture "Letty Lynton" outside of the

*Defendants' Assignment of Errors.*

3730 United States, are in fact those of the defendant Loew's or the defendant Culver or that the defendant Loew's or the defendant Culver is liable by reason of the alleged tortious acts of such corporations committed outside of the United States.

58.

The Court erred in overruling the exception taken on behalf of defendant Culver to the ruling in Paragraph 7 of said portion of the Special Master's report, that Culver is accountable herein (otherwise than in respect of the sum of \$2,876.10, as stated in 59 hereof).

3731 59.

3732 The Court erred in overruling the exception taken on behalf of defendant Culver to the ruling in Paragraph 15 of said portion of the Special Master's report, which disallows as Culver's share of the distributing expense, which "Letty Lynton" should be charged with, the sum of \$12,536.28 based on the relation of costs of distribution to gross receipts, and which allows in place thereof only the sum of \$9,805.79 upon the theory that all feature pictures distributed abroad by Culver during the fiscal year 1933 should bear an equal share of the total distributing expense of Culver for such year for all pictures, and to the portions of Paragraphs 33-36 thereof, both inclusive, which state the reasons for such allowance, and to the finding in Paragraph 35 thereof that during such fiscal year of 1933 the defendant Culver and the foreign corporations of which it was a stockholder distributed the equivalent of forty-five feature pictures, and accordingly excepts to all changes of figures in such accounting based on the aforesaid ruling.

60.

The Court erred in overruling the exception taken on behalf of defendant Culver to the ruling in Paragraph 16

*Defendants' Assignment of Errors.*

of said portion of the Special Master's report, which disallows the sum of \$106,582.99 as the production cost to Culver of the picture "Letty Lynton" and allows in place thereof the sum of \$83,967.30, representing 25% of the sum of \$335,869.21 found in Paragraph 35 of that part of the report dealing with the accounting of the Pictures Corporation, and herewith repeats and renews all exceptions taken herein to the principles and figures upon which the total figure of negative cost is computed; and further excepts to the recommendation of the Special Master that the negative cost or production cost to Culver be increased from 25% to 35.65% of the total production cost in the event that the Court should hold that the complainants are not entitled to recover against Culver.

3733

The following errors are assigned in relation to the Court's rulings in relation to exceptions having to do with foreign corporations in which Culver had only a stock interest:

3734

## 61.

The Court erred in overruling the exception taken on behalf of defendant Culver to the ruling in Paragraph 27 of said portion of the Special Master's report, which is the same ruling as in Paragraph 15 thereof, to which exception was taken as shown under 64 hereinabove, viz.: on the ground that such distributing expenses should be based on the relation of costs of distribution to gross receipts and not upon the theory that all feature pictures distributed abroad by Culver during the fiscal year 1933 should bear an equal share of the total distributing expense for all pictures so distributed, and further excepts to all changes of figures based on such ruling.

3735

## 62.

The Court erred in overruling the exception taken on behalf of defendant Culver to the ruling in Paragraphs 33-36 of said portion of the Special Master's report, both



*Defendants' Assignment of Errors.*

3736 inclusive, which disallows as the total foreign corporations share of the distributing expense, which "Letty Lynton" should be charged with, the sum of \$84,260.05, based on the relation of costs of distribution to gross receipts in the case of each of said corporations, and which allows in place thereof only the sum of \$68,640.54, based upon the theory that all feature pictures distributed abroad by Culver and the foreign corporations during the fiscal year 1933 should bear an equal share of the total distributing expense of Culver and the foreign corporations for such year for all pictures, and further excepts to the portions of such Paragraphs 33-36, both inclusive, which state the reasons for such allowance, and to the finding in Paragraph 35 thereof in which the Special Master finds that during such fiscal year of 1933 the defendant Culver and the foreign corporations of which it was a stockholder distributed the equivalent of forty-five (45) feature pictures, and accordingly excepts to all changes of figures in such accounting based on the rulings in Paragraphs 33-36, both inclusive, of the report.

3737 WHEREFORE, the defendants pray that the said decree may be reversed and for such other and further relief as to the Court may seem just and proper.

Dated, New York, March 27th, 1939.

3738 J. ROBERT RUBIN,  
Attorney for Defendants Metro-Goldwyn  
Pictures Corporation and Metro-Gold-  
wyn-Mayer Distributing Corporation.

LEOPOLD FRIEDMAN,  
Attorney for Defendant Loew's  
Incorporated.

SAMUEL D. COHEN,  
Attorney for Defendant Culver  
Export Corporation.

# Defendants' Citation.

3739

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[SAME TITLE.]

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*By the Honorable Samuel Mandelbaum, One of the Judges of the United States District Court for the Southern District of New York to Edward W. Sheldon and Margaret Ayer Barges, GREETING:*

YOU ARE HEREBY cited and admonished to be and appear before a United States Circuit Court of Appeals to be held in the City of New York in the Borough of Manhattan in the District and Circuit above named, on the 26th day of April, 1939, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the District Court for the Southern District of New York, from a final decree and filed and entered on the 7th day of January, 1939, and filed and entered, as resettled herein, on the 23rd day of January, 1939, in that certain suit being in Equity No. E 69-218 wherein Metro-Goldwyn Pictures Corporation, Metro-Goldwyn-Mayer Distributing Corporation, Loew's, Inc., and Culver Export Corporation are defendants and appellants, and you are plaintiffs and appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said order allowing the appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

3740

Given under my hand at the City of New York, in the Borough of Manhattan, in the District and Circuit above named, this 27th day of March, in the year of our Lord, One thousand nine hundred and thirty-nine, and of the Independence of the United States One hundred and sixty-third.

3741

SAMUEL MANDELBAUM,  
United States Judge for the  
Southern District of New  
York in the Second Circuit.

**Order and Consent re Record and Exhibits.**

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[SAME TITLE.]

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Upon motion of J. Robert Rubin, Esq., attorney for defendants Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation, and of Leopold Friedman, Esq., attorney for defendant Loew's, Inc., and of Samuel D. Cohen, attorney for defendant Culver Export Corporation,

**IT IS ORDERED**

1. That the transcript of record, consisting of two volumes, heretofore filed in this action with the United States Circuit Court of Appeals, Second Circuit, on the appeal taken by complainants from the decree of dismissal in this Court, and resulting in a reversal of said decree by said Court and a decree for accounting in accordance with the decision and mandate of said Court, may for convenience be referred to as the "Proceedings before Accounting", and that the transcript of record on the appeal now petitioned for by the defendants from the final decree of this Court, as resettled on January 23, 1939, may, for convenience, be referred to as the "Accounting Proceedings".

2. That upon the instant appeal both sides may make proper references to such prior record, and that the same need not be recertified or reprinted in connection with this appeal, and that any testimony or exhibits or other papers printed in said prior record admitted as evidence by the Special Master in the accounting proceedings, need not be reprinted in the record of the instant appeal, but may be incorporated therein by proper references to said prior record, to the same effect as if recertified and reprinted as a part of the Accounting Proceedings.

3. That the provisions of old Equity Rule 75, still applicable in copyright cases, requiring the reduction of

*Order and Consent Re Record and Exhibits.*

testimony to narrative form, be and the same hereby are 3745  
 waived, and that any testimony taken before the Special  
 Master, upon the accounting proceedings, may be incor-  
 porated in its original form in the transcript of the record  
 to be filed on the instant appeal.

4. That the following exhibits which were not printed  
 in the prior record or in this record, need not be printed  
 as part of the record on the instant appeal, but may be  
 handed up upon the argument and referred to by any of  
 the parties in briefs with the same force and effect as  
 though physically present in such record:

A. "Trial of Madeleine Smith", offered before the  
 Special Master as Defendants' Exhibit R-2 (marked 3746  
 Defendants' Exhibit E, but not printed in the prior  
 record).

B. Novel "Letty Lynton" by Mrs. Belloc Lowndes,  
 offered before Special Master as Defendants' Exhibit  
 R-5 (marked Defendants' Exhibit C, but not printed  
 in the prior record).

5. That in case it should become necessary or advisable 3747  
 upon the instant appeal to make proper reference to any  
 exhibits admitted in evidence by the Special Master on  
 the Accounting Proceedings, but by agreement of the  
 parties not printed as part of this record, such exhibits  
 may be handed up upon the argument and referred to by  
 any of the parties in briefs with the same force and effect  
 as though physically present in such record.

Dated, New York, N. Y., March 27th, 1939.

SAMUEL MANDELBAUM,  
 District Judge.

Entry of the foregoing order is hereby consented to.

O'BRIEN, IRISCOLL & RAFFERTY,  
 Attorneys for Complainants.

**Complainants' Petition for Appeal and Order  
Allowing Appeal.**

**UNITED STATES DISTRICT COURT,**

**SOUTHERN DISTRICT OF NEW YORK.**

**In Equity No. E-69-218.**

**EDWARD SHELDON and MARGARET AYER BARNES,**  
**Complainants,**

**—against—**

**METRO-GOLDWYN PICTURES CORPORATION, METRO-GOLDWYN-  
MAYER DISTRIBUTING CORPORATION, LOEW'S, INC. and  
CULVER EXPORT CORPORATION,**

**Respondents.**

The above-named complainants, conceiving themselves in part aggrieved by the decree made on January 6, 1939, and re-settled on January 23, 1939, in the above-entitled cause, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Second Circuit for the reasons specified in the assignment of errors which is filed herewith, and they pray that this appeal be allowed and that a transcript of the record and proceedings and papers upon which said decree and order were made and duly authenticated may be sent to the United States Circuit Court of Appeals for the Second Circuit.

**O'BRIEN, DRISCOLL & RAFTERY,**  
**Attorneys for Complainants.**

The foregoing claim of appeal is allowed upon the filing of security for costs or a waiver thereof by the respective defendants.

**Dated: New York, March 29th, 1939.**

**SAMUEL MANDELBAUM,**  
**United States District Judge.**



**Stipulation Waiving the Filing of Security for Costs.**

3751

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**[SAME TITLE.]**

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The undersigned attorneys for the respective defendants hereby waive the filing of security for costs with respect to the appeal of the Complainants herein.

Dated, New York, March 27th, 1939.

**J. ROBERT RUBIN,**

Attorney for Defendants, Metro-Goldwyn Pictures Corporation and Metro-Goldwyn-Mayer Distributing Corporation.

3752

**LEOPOLD FRIEDMAN,**

Attorney for Defendant, Loew's, Inc.

**SAMUEL D. COHEN,**

Attorney for Defendant, Culver Export Corporation.

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## Complainants' Assignments of Error.

[SAME TITLE.]

### ASSIGNMENTS OF ERROR.

Now come the complainants in the above-entitled cause and file the following assignments of error upon which they will rely in the prosecution of the appeal herein petitioned for in the said cause from the decree made on January 6, 1939 and re-settled January 23, 1939.

### PRELIMINARY

The complainants' appeal is confined to certain items of allowance made by the Court in an accounting for profits made by the respective respondents and taken before a Special Master in pursuance of an interlocutory decree of the District Court entered on a mandate of the Circuit Court of Appeals for the Second Circuit on July 29, 1936, and with respect to that account as found by the Court make the following assignments of error.

### AS TO METRO-GOLDWYN PICTURES CORPORATION.

(1) The Court erred in allowing Metro-Goldwyn Pictures Corporation as items of direct cost chargeable against the cost of manufacturing the picture "Letty Lynton", which has been found to be an infringement of the complainants' copyrighted play "Dishonored Lady", the following items:

(a) \$2,000 of the total salary paid to Joan Crawford, an actress who performed in the picture "Letty Lynton".

*Complainants' Assignments of Error.*

(b) \$2,500.00 of the total salary paid to Robert Montgomery, an actor who performed in the picture "Letty Lynton". 3757

representing compensation paid said individuals for their idle time between the finishing of their prior picture and the commencement of their services on the infringing picture "Letty Lynton".

(2) The Court erred in allowing the defendant, Metro-Goldwyn Pictures Corporation charges for departmental overhead as follows:

An item of \$896.05 as overhead of the Stock Talent Department, which item represents the cost of idle time for stock actors. 3758

(3) The Court erred in allowing any credit for general studio overhead.

(4) The Court erred in allowing as items of general studio overhead items of \$1,047,599.43 and \$16,482.70 constituting salaries of executives, assistants, secretaries, stenographers, and expenses of the Executive Department.

(5) The Court erred in allowing as part of the general studio overhead an item of \$2745, designated as "Salaries Maintenance" constituting unearned or idle time of doctors and nurses.

(6) The Court erred in allowing as part of the studio overhead an item of \$27,715.49 representing salaries of directors unassigned, constituting payment for idle time. 3759

(7) The Court erred in allowing as part of the studio overhead items of \$63,996.57, made up of charges for rejected continuities and songs, and an item of \$151,686.80 made up of charge incurred on rejected pictures.

(8) The Court erred in allowing as part of studio overhead an item of \$298,025.47, representing salaries paid to artists for their idle or unassigned time.

*Complainants' Assignments of Error.*

3760 (9) The Court erred in allowing depreciation on defendants' buildings and equipment at Los Angeles Studios or elsewhere.

(10) The Court erred in allowing depreciation on defendants' buildings and equipment at Los Angeles or elsewhere on a basis of cost rather than actual value.

(11) The Court erred in allowing as items of direct costs against the picture "Letty Lynton" the sums of \$3630.12 and \$79.69, as fees and dues paid by Metro-Goldwyn Pictures Corporation to the Motion Picture Producers and Distributors Association for the United States and Canada, respectively.

3761 (12) The Court erred in allowing as a deduction income taxes amounting to \$16,445.48 paid.

**AS TO METRO-GOLDWYN-MAYER DISTRIBUTING CORPORATION.**

(13) The Court erred in making any allowance for home office expense.

(14) The Court erred in making any allowance for depreciation.

3762 (15) The Court erred in making any allowance for depreciation except with respect to the value of the property sought to be depreciated at the time the picture "Letty Lynton" was distributed.

(16) The Court erred in making an allowance of \$9,032.79 for income taxes.

**AS TO DEFENDANT, LOEW'S, INC.**

(17) The Court erred in making any allowance of overhead for the theatres owned, controlled, operated or otherwise affiliated with this defendant during the time the picture "Letty Lynton" was exhibited.

*Complainants' Assignments of Error.*

(18) The Court erred in making any allowance for losses sustained by this defendant directly or indirectly through companies owned, controlled or operated or otherwise affiliated with it in the exhibition of the picture "Letty Lynton". 3763

(19) The Court erred in allowing this defendant a deduction of \$11,269.80 for income taxes paid.

(20) The Court erred in allowing this defendant a deduction in the sum of \$1987.37 for income taxes paid by its foreign subsidiaries.

## AS TO DEFENDANT, CULVER EXPORT CORPORATION.

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(21) The Court erred in allowing this defendant as an expense of foreign distribution the following:

New York overhead	\$178,538.33
Depreciation	137,810.39
Loss on Outside Producers' Pictures	11,551.86
<hr/> Total	<hr/> \$327,900.58

(22) The Court erred in allowing this defendant the sum of \$12,394.88, as a deduction for income taxes paid.

WHEREFORE, complainants pray that the said decree be modified in such wise as to give effect to the foregoing assignments, and that the account be appropriately recast and for such other and further relief as to the Court may seem just and proper. 3765

Dated: New York, March 28th, 1939.

O'BRIEN, DRISCOLL & RAFTERY,  
Attorneys for Complainants.

EDWARD J. CLARKE,

One of the attorneys for Complainants.



**Complainants' Citation.**

3766

*By the Hon. Samuel Mandelbaum, One of the Judges for the Southern District of New York, in the Second Circuit to Metro-Goldwyn Pictures Corporation, Metro-Goldwyn-Mayer Distributing Corporation, Loew's, Inc., and Culver Export Corporation, GREETINGS:*

3767

YOU ARE HEREBY CITED and admonished to be and appear before the United States Circuit Court of Appeals, for the Second Circuit, to be holden in the Borough of Manhattan, in the District and Circuit above-named, on the 28th day of April, 1939, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of New York, wherein Edward Sheldon and Margaret Ayer Barnes are appellants, and you are the appellees to show cause, if any there be, why the decree in said cause should not be corrected, and why speedy justice should not be done the parties in that behalf.

GIVEN under my hand, in the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 29th day of March, in the year of our Lord, One Thousand Nine Hundred thirty-nine, and of the Independence of the United States of America the one hundred and sixty-third year.

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SAMUEL MANDELBAUM,  
United States District Judge for  
the Southern District of New  
York in the Second Circuit.

**Stipulation as to Record.**

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**UNITED STATES DISTRICT COURT,****SOUTHERN DISTRICT OF NEW YORK.**

**EDWARD SHELDON and MARGARET AYER BARNES,**  
**Complainants-Appellees and Appellants,**  
 —against—

**METRO-GOLDWYN PICTURES CORPORATION, METRO-GOLDWYN-  
 MAYER DISTRIBUTING CORPORATION, LOEW'S, INC. and  
 CULVER EXPORT CORPORATION.**

**Defendants-Appellants and Appellees.**

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IT IS HEREBY stipulated and agreed, that the foregoing  
 is a true transcript of the record of the said District Court  
 in the above entitled matter as agreed upon by the parties.

Dated, New York, April 25th, 1939.

**J. ROBERT RUBIN,**

Attorney for the Defendants-Appellants and  
 Appellees Metro-Goldwyn Pictures Cor-  
 poration and Metro-Goldwyn-Mayer Dis-  
 tributing Corporation.

**LEOPOLD FRIEDMAN,**

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Attorney for the Defendant-Appellant  
 and Appellee Loew's, Inc.

**SAMUEL D. COHEN,**

Attorney for the Defendant-Appellant and  
 Appellee Culver Export Corporation.

**O'BRIEN, DRISCOLL & RAFTERY,**

Attorneys for the Complainants-Appellees and  
 Appellants Edward Sheldon and Margaret  
 Ayer Barnes.

## Clerk's Certificate.

3772

UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF NEW YORK.

EDWARD SHELDON and MARGARET AYER BARNES,  
Complainants-Appellees and Appellants,  
—against—

METRO-GOLDWYN PICTURES CORPORATION, METRO-GOLDWYN-  
MAYER DISTRIBUTING CORPORATION, LOEW'S, INC. and  
CULVER EXPORT CORPORATION.

3773

Defendants-Appellants and Appellees.

United States of America, —  
Southern District of New York—ss.:

I, CHARLES WEISER, Clerk of the District Court of the  
United States of America for the Southern District of  
New York, do hereby certify that the foregoing is a correct  
transcript of the record of the said District Court in the  
above-entitled matter as agreed upon.

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IN TESTIMONY WHEREOF, I have caused the seal of the  
said Court to be herewith affixed, at the City of New York,  
in the Southern District, this      day of      in  
the year of our Lord one thousand nine hundred and thirty-  
nine and of the Independence of the said United States the  
one hundred and sixty-third.

CHARLES WEISER,

Clerk.

(Seal)

# Opinion, Circuit Court of Appeals.

3775

No. 392—OCTOBER TERM, 1938.

Argued June 15, 1939.

Decided July 28, 1939.

Appeal from the District Court of the United States for the Southern District of New York.

Before—L. HAND, CHASE, and PATTERSON, *Circuit Judges*.

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EDWARD SHIELDON and MARGARET AYER BARNES,  
Appellees-Appellants,

v.

METRO-GOLDWYN PICTURES CORPORATION, METRO-GOLDWYN-MAYER DISTRIBUTING CORP'N, LOEW'S, INC. and CULVER EXPORT CORP'N,

3776

Appellants-Appellees.

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Appeals by both plaintiffs and defendants from a final decree in equity of the District Court for the Southern District of New York in a suit for the infringement of copyright.

ARTHUR F. DRISCOLL, of New York City, for plaintiffs.

JOHN W. DAVIS, of New York City, for defendants.

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L. HAND, *Circuit Judge*:

This case comes before us again, this time upon a final decree, entered upon the accounting which we directed before. 81 F. 2d 49. The district court referred the account to a master, who heard the parties at great length and made a voluminous report which the district judge affirmed in most respects. The decree awards to the plaintiffs all the profits made by the defendants from exhibitions of the picture, "Letty Lynton", and the principal question is whether this was correct. The defendants insist that the

*Opinion of Circuit Court of Appeals.*

3778 profits should have been apportioned, and that the record contains evidence by which that can be done. Their reasoning is that the recovery of the author of a copyrighted work ought to be limited to those profits which result from its exploitation; and that since the value of the picture here depended only in very small measure upon those parts which the defendants have been found to have lifted, they should be accountable for only a correspondingly small part of the profits. Even if this be true, it is equally true that an infringer carries the burden of disentangling the contributions of the several factors which he has confused. The law requires him to resolve any doubts arising from his wrong; he is like any other constructive trustee.

3779 *Callaghan v. Myers*, 128 U. S. 617, 666, 9 S. Ct. 177, 32 L. Ed. 547. Unless, however, there is an absolute bar against his success, the only question is what evidence of separation courts will accept. Strictly and literally, it is true that the problem is insoluble. The profits from a picture consist of admission fees, which the playgoers pay because the picture attracts them with the hope of enjoyment. That enjoyment, which is one source of its further popularity, is made up of many factors: the actors, the work of the producer and director, the story, the scenery and costumes. The attraction and the hope which first draws them are principally aroused by advertisements, and the reputation of the stars and the producing company.

3780 These factors have no unit common to all, and are therefore incommensurable; in that, the situation is not different from the usual case of copyright infringement where the pirated material has been mixed with matter in the public domain. The difficulties of separation have generally prevented infringers from attempting any apportionment; they have contented themselves with getting down the net profits as low as possible. That was the case in *Callaghan v. Myers*, supra; and in *Belford, Clarke & Co. v. Scribner*, 144 U. S. 488, 508, 12 S. Ct. 734, 36 L. Ed. 514; and for this reason the general language there used is not to be taken as holding that the infringer must always be unsuccessful,



*Opinion, Circuit Court of Appeals.*

no matter what evidence he may bring forward. They hold no more than that when he makes no effort to discharge the duty resting upon him, he will be cast for the whole profit. *Dam v. Kirke La Shelle Co.*, 2 Cir., 175 F. 902, 41 L. R. A., N. S. 1002, 20 Ann. Cas. 1173, cannot, however, be so explained. The appeal came up from an interlocutory decree, which did not of itself involve the point, but the court, apparently *sua sponte*, undertook to declare that the plaintiff should recover all the profits. The defendant moved for a modification of this provision, so as to allow it to prove the value of its own contribution to the play. By affidavits it proposed to show what were the royalties usual in the industry, and other matters which it thought relevant. The court nevertheless adhered to its first decision, apparently not because the specific evidence offered was unacceptable, but because no evidence would serve. We understand it to have held that an infringer, at least if he is a deliberate plagiarist, must surrender his entire profits, regardless of the relative importance of the copyrighted and uncopyrighted material he has used. In *Harold Lloyd Corp. v. Witwer*, 9 Cir., 65 F. 2d 1, the bill was dismissed for non-infringement, but Judge McCormick in a dissenting opinion declared that the profits might be and should be apportioned. He seems to have based his conclusion principally upon that clause in section 25 of the Copyright Act, 17 U. S. C. A. §25, which gives the court power to award damages "in lieu of actual damages and profits". *Hartford Printing Co. v. Hartford Directory & Printing Co.*, C. C., 146 F. 332, is the only other decision on the point that we have found, and looks towards the possibility of apportionment. It must be owned, however, that in point of authority the plaintiffs have the advantage.

Essentially the same problem arises in patent accountings. It is true that the question most mooted there is in what circumstances the patentee succeeds in throwing upon the infringer the duty of separating that part of the profits which he has himself contributed, and upon that rock most patentees used to be wrecked. *Westinghouse Electric &*

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84 *Mfg. Co. v. Wagner Electric & Mfg. Co.*, 225 U. S. 604, 32 S. Ct. 691, 56 L. Ed. 1222, 41 L. R. A., N. S. 653, was primarily intended to treat them more liberally, and, so far, ~~it is~~ not relevant to this appeal, for that burden is always on the copyright infringer. However, in those situations in which the burden does shift to the patent infringer, the same difficulty appears as in copyright suits, for in both ~~it is~~ nearly as unfair to cast the infringer for all the profits, as it would be to deny the patentee or author any recovery whatever, because he could not separate his contribution. This plight of the infringer was considered in *Westinghouse Electric & Mfg. Co. v. Wagner Electric & Mfg. Co.*, supra, and in 225 U. S. on page 620, 32 S. Ct. on page 696, 56

85 L. Ed. 1222, 41 L. R. A., N. S. 653, the court plainly recognized that "by general evidence, expert testimony or otherwise" he might relieve himself; his privilege was confirmed in *Dowagiac Mfg. Co. v. Minnesota Moline Plow Co.*, 235 U. S. 641, 647, 35 S. Ct. 221, 59 L. Ed. 398. In 1922, in rather delayed response to these decisions, Congress changed the statute by providing (section 70, Title 35, U. S. Code, 35 U. S. C. A. §70) that "opinion or expert testimony" should be competent upon the issue, apparently without regard to where the burden of proof might for the moment lie. Since then, such testimony has often been used in patent accountings, though it has by no means removed

86 all the difficulties. It seems to us that we ought not to disregard the progress of the law in a field so close to that before us. While it remains true for the reasons we have already given, that, except in the most general way, the percentages of experts cannot be used to solve a problem in which there is no common measure, yet it would be a mistake to deny all weight to them. Men often make quantitative judgments and act upon them in matters which logically admit of them as little as this. If one says that he likes one kind of music twice as much as another, we do not charge him with talking nonsense. We should indeed do so, if he added that his liking for Wagner was ten per cent of his liking for Beethoven; but even then it would express,

*Opinion, Circuit Court of Appeals.*

however pedantically, a different degree of preference from the first form, and it might well have different practical consequences. A court is justified in basing its decrees upon practices common in other human affairs; and we can no longer accept the doctrine of *Dam v. Kirke La Shelle Company*, supra, that by no hook or crook can an infringer be relieved of so manifestly unjust a result.

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The evidence offered in the case at bar was of two kinds: the price of the picture rights in the play, as both plaintiffs and defendants had agreed to it, and the opinions of experts. As to the first, if we knew that the price represented the utmost that the defendants would have given for the rights, and if at that time they also knew how much the picture as a whole would cost, the proportion between that cost and the price of the rights might vaguely indicate the defendants' judgment of the play's proportional drawing power. These conditions were not, however, shown to have been fulfilled. The price resulted from a bargain, determined as well by the plaintiffs' necessities, as by the defendants' estimate of the play's probable contribution. Again, while the defendants knew whom they would make the stars, it does not appear that they had forecast the whole cost of the picture. Finally, even were all this known, the cost of the other factors was by no means a measure of their relative drawing powers. For these reasons we discard the agreed price. The expert testimony was of two kinds, that of producers and that of exhibitors. The questions put to each were substantially the same: what was the proportion of the gross receipts properly apportionable to the play? Their answers were in percentages that ran between five and twelve (one of them is perhaps to be understood as saying that the play contributed nothing at all). Very generally they professed to believe that the controlling factor in the success of a play was the popularity of the actors—the stars—and that in the case at bar the two "leads", Crawford and Montgomery, had stood very high in the public esteem in 1932. (Indeed, the infringing picture itself was sold to many exhibitors merely as "Pro-

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*Opinion, Circuit Court of Appeals.*

duction No. 208, Joan Crawford No. 2".) They agreed that in the case of a very well known book or play, the story might contribute more, but that the plaintiffs' play was not in that class. They thought that the other chief factors were the skill and reputation of the producer and the director, the scenery and costumes, the extent of the advertising and the reputation and standing of the producing company itself, which gave an assurance to exhibitors and to playgoers, on which both very largely relied. The plaintiffs called no witnesses to rebut this testimony, and if their failure to do so was because of the commanding position of the defendants in the industry, they did not prove it. We must therefore assume that the testimony represents the best opinion of the calling.

Before fixing a percentage upon the basis of this testimony we must consider two things peculiar to the case at bar. First, all the witnesses' estimates were based upon the contribution of the entire play; that is, as though it was completely the work of the plaintiffs. As we know, that was not the case; the plaintiffs worked over old material; the general skeleton was already in the public demesne. A wanton girl kills her lover to free herself for a better match; she is brought to trial for the murder and escapes. Nobody can say how far this basic plot is to be credited with whatever the play contributed to the drawing power of the picture. What consideration must therefore count towards reducing the percentage of profits recoverable. On the other hand the defendants may not count the effect of their standing and reputation in the industry; probably the most important factor of all, after the stars. They were not innocent offenders; they deliberately lifted the play; it would take far more than the denials in the old record to convince us to the contrary in the face of the step by step "tracking" which our comparison and analysis disclosed. The defendants appear to have understood our refusal on the first appeal to pass upon this issue as evidence of our acceptance of their disclaimers. We meant nothing of the kind; it was not necessary to decide the issue and we left it open against the chance of receiving new light.

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No new light has come, and we now hold that the borrowing was a deliberate plagiarism. It follows that they can be credited only with such factors as they bought and paid for; the actors, the scenery, the producers, the directors and the general overhead. *Callaghan v. Myers*, supra, 128 U. S. 617, at page 665, 9 S. Ct. 177, 32 L. Ed. 547; *Flat Slab Patents Co. v. Turner*, 8 Cir., 285 F. 257, 282, 283; *Kansas City Hay Press Co. v. Derol, C. Co.*, 127 F. 363, 369. Indeed a constructive trustee, who consciously misappropriates the property of another, is often refused allowance even of his actual expenses (Restatement of Restitution §158(d)) and although this harsh rule, which would charge the defendants with the whole gross receipts, has been softened; a plagiarist may not charge for his labor in exploiting what he has taken. A fortiori he should not be allowed for the currency which his reputation may have given to the combined product.

We are aware that out of all this no real standard emerges, and that it would be absurd to treat the estimates of the experts as being more than expressions of very decided opinions that the play should count for very little. But we are resolved to avoid the one certainly unjust course of giving the plaintiffs everything, because the defendants cannot with certainty compute their own share. In cases where plaintiffs fail to prove their damages exactly, we often make the best estimate we can, even though it is really no more than a guess (*Pieczonka v. Pullman Co.*, 2 Cir., 102 F. 2d 432, 434), and under the guise of resolving all doubts against the defendants we will not deny the one fact that stands undoubted. Procedural duties are devised in aid of truth; and their unsparing use may defeat their whole purpose, as here it would. However, though we do not press the burden of proof so far, the defendants must be content to accept much of the embarrassment resulting from mingling the plaintiffs' property with their own. We will not accept the experts' testimony at its face value; we must make an award which by no possibility shall be too small. It is not our best guess that must prevail, but a

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796 figure which will favor the plaintiffs in every reasonable chance of error. With this in mind we fix their share of the net profits at one fifth.

## THE ACCOUNTING.

Both parties objected to a number of items in the accounts, as fixed by the master and confirmed by the judge. We shall first take up the defendants' objections, and then the plaintiffs', in the same order in which they appear in the briefs.

## THE DEFENDANTS' OBJECTIONS.

797 (1) The master refused to allow as a credit a certain part of the profits which had been paid to the Louis B. Mayer Company, a partnership made up of three persons—Mayer, Thalberg and Rubin—all important officers of one or another of the defendants. When they entered the defendants' employ, they were able, because of their strong position in the industry, to exact an agreement for a share of all the profits of the Metro-Goldwyn Pictures Company. This was evidenced by a contract which was later superseded by a contract with Loew's, Inc., whose profits were substituted for those of the Pictures Company. We do not see why payments made under these contracts should not be credited to the defendants. Even though we assume arguendo that the plaintiffs could recover them from the partners personally, in this suit they can reach only the defendants' profits. The payments were never profits of the defendants at all; the contracts effectively laid hold of them the moment they came into existence. Not to allow the credit would be in substance to introduce the partners as defendants into this suit, and yet to hold Loew's, Inc., liable for the recovery against them. We allow the credit.

798 (2) The next question is how to find the proper distribution cost of the infringing picture. Several ways might be theoretically proper; but we have to choose between only

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two: one, to divide the total by the number of pictures distributed by the defendants in 1932; the other, to divide it by the infringing picture's proportion of the total gross receipts. The master took the first; the defendants wish us to take the second; nobody suggests that the costs should be divided in accordance with the cost of production. The distribution cost is made up of a number of items, some of which it might be better to divide by one rule, and some by another. For example, the cost of the advertisements and other publicity might very well vary with the cost of production; the cost of carriage might perhaps best be divided by the number of theatres at which the picture was exhibited. But we cannot see why on any theory the cost of distribution should vary with gross receipts. As between the two we therefore accept the master's disposition of this item.

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(3) The next point is whether to include the profits made from exhibiting the infringing picture outside the United States. At first blush it would indeed seem that these should be excluded. The plaintiffs made no proof of foreign law, and we cannot say that the exhibition of the positives abroad was a tort. However, exhibition is not the only act forbidden by the Copyright Act; Section 1(d), 17 U. S. C. A. §1(d), gives to the author the exclusive right, not only to perform a dramatic work, but "to make \* \* \* any transcription or record thereof \* \* \* from which, in whole or in part, it may in any manner \* \* \* be \* \* \* reproduced." The Culver Company made the negatives in this country, or had them made here, and shipped them abroad, where the positives were produced and exhibited. The negatives were "records" from which the work could be "reproduced", and it was a tort to make them in this country. The plaintiffs acquired an equitable interest in them as soon as they were made, which attached to any profits from their exploitation, whether in the form of money remitted to the United States, or of increase in the value of shares of foreign companies held by the

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02 defendants. We need not decide whether the law of those countries where the negatives were exploited, recognized the plaintiffs' equitable interest; we can assume *arguendo* that it did not, for, as soon as any of the profits so realized took the form of property whose situs was in the United States, our law seized upon them and impressed them with a constructive trust, whatever their form. Compare *Goulds Manufacturing Co. v. Coring*, 105 U. S. 253, 26 L. Ed. 987; *Dowagiac Mfg. Co. v. Minnesota Moline Plow Co.*, *supra*, 235 U. S. 641, at page 650, 35 S. Ct. 221, 59 L. Ed. 398.

03 (4) The next item is the profits of the defendant Loew's theatre-subsidaries, with which the defendants say that they should not be charged, except so far as they have received them in kind. If any subsidiary were insolvent, it would of course be true that its creditors would have a prior claim upon its profits; but there is no suggestion that any of them are. That being true, it makes no practical difference whether the profit comes to the defendants in the form of a dividend, or whether it merely enhances the value of their shares. (This we have already implied under the last point.) The master in all cases prorated the subsidiary's profits to the proportion of its shares held by the defendants, and they can demand nothing more. It is true that the defendants were not formally the exhibitors of these positives, but that makes no difference. Indeed, the situation in this respect is precisely like that of the exported negatives which we have just considered. Moreover, 04 as to these positives there are two other answers. The exhibitions were torts, even if they were not torts of the defendants, and the profits were benefits arising from them: which the defendants received as volunteers, for they paid nothing for them. Like other volunteers they are accountable for any benefits received from a constructive trustee. Restatement of Restitution §160(g). Finally, the defendants were in fact the real tortfeasors, because, although the subsidiaries had a formal separate existence, the master found that Loew's, Inc. was the principal even in the act of

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exhibiting the pictures; their officers were in complete control of the subsidiaries, which were used merely as agents. *Kingston Dry Dock Co. v. Lake Champlain Transportation Co.*, 2 Cir., 31 F. 2d 265, 267; *Pacific Can. Co. v. Hewes*, 9 Cir., 95 F. 2d 42, 45, 46; *Berkey v. Third Avenue R. Co.*, 244 N. Y. 84, 95, 155 N. E. 58, 50 A. L. R. 599. 3805

(5) Next, the defendants wish the "overhead expenses" allocated by the number of pictures, as the master allocated the distribution cost. The master, on the contrary, used the cost of production as the basis. Neither is theoretically accurate; to make a perfect allocation one would have to examine what part of the time of all the employees whose pay went into the "overhead", was given to each picture; and so of the other expenses. That was obviously impossible. It is on the whole more likely that a given picture required that proportion of the general services represented by its cost of production, than that each picture shared those services equally. The last is a very remote possibility indeed; the first is more likely to conform to the facts, if we could know them. The master's solution appears to us as nearly right as was practically possible. 3806

(6) Next is an item disallowed by the master, which arose as follows. The defendants found by experience that of those "continuities" which they made from stories or from plays bought by them, or which were entirely composed by writers in their employ, a very substantial number turned out failures. To meet this, in 1932 for the first time, they set up on their books, as part of "studio overhead" an item of \$500,000, representing what they estimated would be the loss on their existing stock of "continuities". Had this been an annual depreciation credit, based upon past experience, something might be said for treating it as an expense of the business, like the item of "rejected continuities" which will come up later. But it was not of that kind; it was an estimate of the proper deduction from the cost on the books of losses already suf- 3807

*Opinion, Circuit Court of Appeals.*

3808 fered. We cannot understand by what reasoning this should be part of the "overhead" for the year 1932.

(7) The last of the defendants' objections was to the master's exclusion as a deduction of ~~the~~ interest upon a large loan made by Loew's, Inc., the "top company", to the Pictures Company, in the form of an open account going back twelve years. It is impossible to say how much of those things purchased by the proceeds of this loan continued to be used in 1932. The master included in the "overhead" an interest charge upon all the plant investment of the defendants used in making the picture. He computed this like the other "overhead" by taking that proportion of the total plant machinery and "properties", which the cost of production of the picture bore to the cost of production of all pictures. To this he added the interest for six months upon \$300,000, taken as working capital. Certainly it would have been improper to allow both this and interest on the loan. If the Picture Company borrowed its capital and was allowed the interest as an expense, it could not charge anything for the value of those things used in production. But that aside, there was no warrant for allowing interest on the loan in any case. So far as its proceeds had been used up, the continued payment of interest upon the loan by which they had been procured, was not relevant to the production of the infringing picture. The master's method was in any event preferable. Moreover, the transaction seems to have been strictly intramural; we cannot understand why it should figure as an item in the accounts of the plaintiffs with the defendants collectively.

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## THE PLAINTIFFS' OBJECTIONS.

(1) The plaintiffs' first objection is to the master's allowance as a credit of the income taxes paid by the defendants. He allowed them because he thought that the defendants were not deliberate plagiarists; otherwise the



*Opinion, Circuit Court of Appeals.*

case would have fallen within the ruling of the Supreme Court in *L. P. Larson, Jr., Co. v. Wm. Wrigley, Jr., Co.*, 277 U. S. 97, 48 S. Ct. 449, 72 L. Ed. 800; *Goodyear Tire & Rubber Co. v. Overman Cushion Tire Co.*, 6 Cir., 95 F. 2d 978, 985. See also, *Stromberg Motor Devices Co. v. Detroit Trust Co.*, 7 Cir., 44 F. 2d 958; *Stromberg Motor Devices Co. v. Zenith-Detroit Corp.*, 2 Cir., 73 F. 2d 62. From what we have already said regarding the defendants' guilt, it appears that the master was wrong. It does indeed seem somewhat arbitrary to distinguish this from other expenses necessary to the business; yet on the other hand the distinction illustrates that in dealing with a conscious wrong-doer, courts do not feel obliged for consistency's sake to take one extreme or the other.

(2) The second objection is to the allowance by the master for what is known as "idle time". It was the frequent practice of the defendants to employ their more costly employees—directors, producers, stars and writers—at yearly salaries, rather than by the picture. This involved a certain waste of time since one picture cannot always be fitted closely upon another. The "idle time" of Crawford and Montgomery before making the infringing picture was allowed as a credit, and similar allowances were made in the "overhead". The plaintiffs must take the defendants' practices as they were; they are confined to the profits actually made, not to what the defendants might have made. If it was in the long run more economical to employ their assistants by the year, obviously the "idle time" must be paid for by the returns from pictures, and whether it was better to charge it to the next following picture, or to an earlier one, is not important. The allocation was fair.

(3) Next is the objection to deducting a payment made by the defendants to the Motion Pictures Producers and Distributors Association (the Will Hays Association) based upon the revenues derived from the infringing picture. The assumption is that this association will repay, or rebate,

*Opinion, Circuit Court of Appeals.*

3814 so much of this payment as represented the profits which must be restored under the decree in this suit. That is, however, speculative; the money was paid and created a credit; if the plaintiffs had wished to prove a corresponding charge, it rested with them to do so. They could have examined the officers of the association.

3815 (4) Next is a challenge to any allowance for "overhead" at all, on the theory that the defendants did not show that it had been increased by the production of the infringing picture. The correct rule upon this point is stated in *Lerin Bros. v. Davis Mfg. Co.*, 8 Cir., 72 F. 2d 163, and in substance it is this. "Overhead" which does not assist in the production of the infringement should not be credited to the infringer; that which does, should be; it is a question of fact in all cases. In the case at bar the infringing picture was one of over forty made by the defendants, using the same supervising staff and organization, which had to be maintained if the business was to go on at all. Without them no picture could have been produced; they were as much a condition upon the production of the infringing picture as the scenery, or the plaintiffs' play itself. *Lerin Bros. v. Davis Mfg. Co.*, supra, did not hold otherwise; nor did *Haisa Mfg. Co. v. Link-Belt Co.*, 3 Cir., 63 F. 2d 479.

3816 (5) The next objection is to the inclusion in the "overhead" of an allowance for continuities scrapped, and for completed pictures never exhibited. The plaintiffs invoke the rule that an author, like a patentee, may select those infringements which prove profitable, and ignore the rest. *Crosby Steam Gate Valve Co. v. Consolidated Safety Valve Co.*, 141 U. S. 441, 457, 12 S. Ct. 49, 35 L. Ed. 809. On the other hand there is in most industries a certain inevitable wastage, resulting from imperfect industrial technique and the like; and this, being a condition upon all production, is a part of the cost of production. *Duplate Corp. v. Triplex Safety Glass Co.*, 298 U. S. 448, 56 S. Ct.

*Opinion, Circuit Court of Appeals.*

792, 80 L. Ed. 1274. The charge for wasted pictures and "continuities" was of this kind; owing to the imperfect forecast of what would prove a good "continuity", a number of false starts were inevitable; sometimes even a complete picture would also turn out to be valueless. The plaintiffs answer that they were not in partnership with the defendants, whose failures should not be charged to them. But the infringing picture owed its success in part to the fact that it was only one of a large number produced that year. Had defendants not had so large a capacity, the profits might never have been made at all; certainly they would not have been as large. Since therefore the plaintiffs profited by the fact that the defendants had developed this capacity, they must be content to take the breakage, so to say, which was its inevitable incident. 3817

16 & 70 T next objection we may pass, because it is covered by what we have said in section four. The next following relates to the way in which the interest item in the overhead was calculated; that is, to the "base" used. In computing it the realty was appraised, but the value of the personalty was taken at cost less depreciation. It was formally inconsistent not to appraise both, but the extravagant labor of doing so was an excuse, especially when one considers the small amount involved. It was better also to compute this item by assuming that the infringing picture used that proportion of the whole plant which its cost of production bore to the cost of production of all pictures made that year, than to attempt any allocation of buildings and other property according to their actual use for the picture. The second method would have been incredibly difficult in application, involving as it would a different proportional use of each bit of property concerned. 3818

(8 & 9) The next objection is covered by what we said in section four, but the following one raises an interesting question. The plaintiffs say that they should not be charged with the losses resulting from the exhibition of the infringing picture in certain theatres, where the receipts did not 3819

*Opinion, Circuit Court of Appeals.*

3820 equal the costs of maintenance during the period of the exhibition. We think that so far they are right. The exhibition of a picture at theatre X was a separate tort which the plaintiffs might elect to sue upon, ignoring any losses from the exhibition at theatre Y. As to exhibitions in the United States we therefore hold that the losses should not be credited to the defendants. Exhibitions in foreign countries stand on another basis. As we have said, the exhibition of the positives was not a tort, or at least it was not shown to have been a tort; therefore the plaintiffs had no choice but to sue for the next profits arising out of the manufacture of the negative. They could not therefore select the profitable exhibitions and discard those which resulted in a loss, but must take the bitter with the sweet. The ruling of the master is modified as to exhibitions in the United States.

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(10) The last of the plaintiffs' objections is somewhat complicated, though it involves very little. It arose in this way. The Culver Company exported all the negatives manufactured by the defendants during 1932, the infringing picture among them. There were expenses of distribution for all these amounting to nearly \$500,000, and the question is how much of this should be credited against profits from the infringing picture. We have already affirmed the master in his apportionment of distribution costs equally among the "feature pictures". In his apportionment of the United States costs, in order to get a commutation figure for "news reels" and "shorts"—of which a great number was sent out—he adopted the formula that one "feature" was equal to nine reels; and by applying this he found an equivalent of 60 "features" distributed in the United States, made up of true "features" together with commuted "news reels" and "shorts". Forty-three "features" were exported in 1932; and forty-three two reel "shorts" and forty-one one reel "shorts" along with them. Using the master's formula that was the equivalent of fifty-seven "features". He reduced this divisor to forty-five because not all of the "features" were sent to all the coun-

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*Opinion, Circuit Court of Appeals.*

tries where the costs were incurred. On the other hand he made no allowance for the foreign films that went along with the American films, as the laws of many countries often require. The deduction, being a credit, the defendants had the burden of proving it; all they did prove was that the equivalent of fifty-seven films were exported. It seems to us that, for all we can tell, the reduction of the divisor to forty-five for those "features" which were not sent to all countries, may well have been balanced by the foreign films that went along with the American; and that there was really no warrant for any other divisor than fifty-seven, which we fix as the proper one. The item will be so computed.

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## ALLOWANCE TO THE PLAINTIFFS' ATTORNEYS.

There remains nothing but the allowance to the plaintiffs' attorneys in all courts. This the judge fixed at \$55,000, not including this appeal. He made up the figure as follows: \$10,000 for preparing for trial, \$5,000 for the trial, \$10,000 for the appeal; \$22,500 for the accounting; \$7,500 for arguing the exceptions before himself. The great reduction in the recovery must result in a reduction of the allowances, though by no means in the same proportion. The amount of work was extremely large, and the computations were intricate and long; the plaintiffs had to go to California for part of the hearings, and the cause has been pending for more than seven years. We will make the following awards: for preparation for trial and for the trial \$10,000; for the first appeal \$5,000; for the hearings before the master \$15,000; for the hearing on the exceptions \$3,000; making \$33,000 in all. We shall allow nothing for the argument on this appeal, since the defendants were successful. Section 40 of the Copyright Act, 17 U. S. C. A. §40, awards "full costs" to the "prevailing party", and that will give the costs of the appeal to the plaintiffs; but it leaves the allowance to attorneys in the discretion of the court.

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Decree reversed and cause remanded for further proceedings not inconsistent with the foregoing.



# Petition for Rehearing.

3826 UNITED STATES CIRCUIT COURT OF APPEALS,  
SECOND CIRCUIT.

EDWARD SHELDON and MARGARET AYER BARNES,  
Appellants,  
—against—

METRO-GOLDWYN PICTURES CORPORATION, METRO-GOLDWYN-  
MAYER DISTRIBUTING CORPORATION, LOEW'S, INC., and  
GILVER EXPORT CORPORATION,

Appellees

3827 To Honorable Circuit Judges Learned Hand, Harrie B  
Chase and Robert Patterson:

This is a petition for rehearing on the following grounds:

(a) The case of *Belford v. Scribner*, 144 U. S. 488, cited by this Court cannot be distinguished on the basis that the record therein contained no evidence upon which apportionment of profits might be based.

3828 (b) Even if the decisions of the Supreme Court are held not to be controlling and the present case is held to be one proper for apportionment, plaintiffs should be allowed to present evidence before *one-fifth of the profits* is finally fixed as a yardstick.

## A.

*Belford v. Scribner*, 144 U. S. 488.

There have been three outstanding authorities, all mentioned in the opinion of this Court, upon the question of whether deliberate plagiarists should be made to account for all profits accruing to them from the infringement or whether on the other hand there should be apportionment

*Petition for Rehearing.*

between the literary material and the other factors contributing to the infringing work. These cases are *Callaghan v. Myers*, 128 U. S. 617; *Belford v. Scribner*, *supra*, and *Dam v. Kirk LaShelle Co.*, 175 Fed. 902 (2nd Circuit). 3829

In its opinion herein this Court states:

"The difficulties of separation have generally prevented infringers from attempting any apportionment; they have contented themselves with getting down the net profits as low as possible. That was the case in *Callaghan v. Myers*, *supra*, and in *Belford v. Scribner*, 144 U. S. 488, 508; and for this reason the general language there used is not to be taken as holding that the infringer must always be unsuccessful, no matter what evidence he may bring forward. They hold no more than that when he makes no effort to discharge the duty resting upon him, he will be cast for the whole profit." 3830

The record in the *Belford* case, *supra*, discloses very definitely that the defendant not only made an effort to have the profits apportioned, but that upon the evidence therein profits could have been apportioned almost to a mathematical certainty.

The *Belford* case concerned the plagiarism of a cook book. In an endeavor to seek an apportionment of the profits defendants placed upon the stand as an expert on cook books one Thomas W. Handford, who testified at page 116 of the record, that he had made a careful examination of the protected and the infringing cook books. He testified that such examination had disclosed that 153 recipes had been copied in whole or in part by the infringer from the protected cook book. These recipes constituted only a part of the recipes in the infringing cook book. Mr. Handford testified that these plagiarized recipes constituted a total of 2,010 lines, or 56 pages of the total of 300 pages of recipes contained in the infringing cook book. At folio 3831

*Petition for Rehearing.*

832 211, page 117 of the record Mr. Handford was asked the following question, and made the following reply:

"Q. If the matter which has been copied from 'Common Sense in the Household' and which appears in 'How to Cook', including all recipes, any portion of which has been there copied, were to be taken out of the book 'How to Cook', would it leave a work of value as a cook book? A. Oh, yes, certainly."

At page 122 of the record we find the following specific assignment of error to the Supreme Court of the United  
833 State by the appellant Belford:

"Because the decree goes for the entire amount of the profits realized by Belford, Clark & Co., who were the proprietors of the book which is alleged to infringe the rights of the complainant *instead of for such part of the profits as were realized by the infringement.*"

The foregoing is definitely at variance with the statement of the Court that the *Belford* case holds no more than that when an infringer makes no effort to discharge the duty resting upon him of showing how the profits might be apportioned, he will be cast for the whole profit.  
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**B.**

Even if the decisions of the Supreme Court are held not to be controlling; and the present case is held to be one proper for apportionment, plaintiffs should be allowed to present evidence, before the Court fixes one-fifth of the profits as the proper yardstick.

This Court, speaking of the expert testimony offered by defendants, stated:

"The plaintiffs called no witnesses to rebut this testimony, and if their failure to do so was because

*Petition for Rehearing.*

of the commanding position of the defendants in the industry, they did not prove it. We must therefore assume that the testimony represents the best opinion of the calling." 3835

The Court in this statement overlooked important factors. Prior to the decision in this case the law in this circuit was deemed settled by the case of *Dam v. Kirk LaShelle Company*, 175 Fed. 902, which case was understood to rule as your Honors have stated:

"We understand it to have held that an infringer, at least if he is a deliberate plagiarist, must surrender his entire profits, regardless of the relative importance of the copyrighted and uncopyrighted material he has used." 3836

Since the law on the question of apportionment was apparently settled by the prior decision of this Court in *Dam v. Kirk LaShelle Company*, *supra*, plaintiffs were justified in objecting to the evidence of defendants' experts as irrelevant and immaterial and refusing to meet the issue, as complainants did.

The present decision of the Court fixing the yardstick of one-fifth of the profits, penalizes complainants for accepting the law to be as set forth in *Dam v. Kirk LaShelle Company*, *supra*, not then overruled, and as set forth in *Belford v. Scribner* and *Callaghan v. Myers*. 3837

**Plaintiffs' Offer of Proof.**

If permission is granted to plaintiffs to present testimony in rebuttal of the defendants' experts, plaintiffs can and will furnish evidence which will demonstrate that the ruling laid down by this Court allowing the copyright owners 20% of the net profits, is not only improper and inadequate, but constitutes an open invitation to plagiar-

*Petition for Rehearing.*

ism, since it would enable a deliberate plagiarist to pirate literary material without fear of penalty.

The plaintiffs' proof would include the following:

**(1) *Testimony of Experts.***

Expert testimony to establish that the story is the most important factor contributing to the gross receipts or the box office success and that it outweighs in importance all other contributions. This evidence will establish that the critical element which has determined the issue of success or failure of a motion picture has been the story. In a motion picture photoplay, far more than on the stage, the play itself is the thing which catches the favor of the audience.

**(2) *Pictures With Star Casts and Poor Stories Have Been Box Office Failures, and Pictures With Good Stories, Even With Unstarred Actors, Have Been Box Office Successes.***

The testimony which will be offered by the plaintiffs' experts can be corroborated factually by submitting a long list of pictures in which outstanding starred and featured actors and extravagant production have failed to carry a poor story to box office success. On the other hand a list of motion pictures can be compiled, extending for many years back, which will overwhelmingly demonstrate the importance of a good story to the picture.

**(3) *Prices Paid for Successful Stage Plays.***

Any realistic approach to the proper measure of the value of the story to the motion picture must take into consideration the experience of the past seven years in which this suit has been in litigation with respect to the prices paid for the motion picture rights of stage successes.

The importance of dramatic material as the basis for



*Petition for Rehearing.*

motion pictures has come to be recognized more and more, 384  
and may be gathered from the following list:

**Plays for Which \$200,000 or More Has Been Paid for the  
Motion Picture Rights Within the Past Several Years:**

ROOM SERVICE (\$255,000)

AMERICAN WAY

YOU CAN'T TAKE IT WITH YOU

ABE LINCOLN IN ILLINOIS

**\$150,000 to \$200,000:**

DEAD END

BROTHER RAT

DODSWORTH

**\$100,000 to \$150,000:**

YES, MY DARLING DAUGHTER

EXCURSION

BOY MEETS GIRL

IDIOT'S DELIGHT

STAGE DOOR

THE WOMEN

ANYTHING GOES

PETRIFIED FOREST

GREEN PASTURES

DINNER AT EIGHT

GOOD EARTH

In some instances in the foregoing list a percentage of the gross receipts was provided for in addition to payment of the specific sum.

The novel, BEN HUR, has produced in royalties for the Wallace family in the neighborhood of \$4,000,000, of which a large portion is made up of moneys, royalties and percentages paid for the motion picture rights.

*Petition for Rehearing.*

3841 The motion picture rights of the play ABIE'S IRISH ROSE were sold for \$300,000, plus 50% of the profits.

In the testimony offered by the defendants in this action the experts expressed their opinion as to the share of the gross receipts attributable to the story. This Court has accepted, apparently, the principle that such apportionment can be made, and the plaintiffs now request that this Court grant them leave to offer testimony on their own behalf on this point. It must be observed, however, that even though it may be possible in the opinion of defendant's experts to attribute various portions of the gross receipts to different factors or elements entering into the ultimate motion picture photoplay, it does not necessarily follow that such division of gross receipts should be applied to an apportionment of profits in a plagiarism case. An apportionment of gross receipts assures the author of a payment for his rights in accordance with the percentage asserted by such experts to be adequate. An apportionment of profits assures the author of nothing and the application of such principle may permit a motion picture company to pirate a highly valuable piece of literary property and by extravagant production reduce the profits to a small amount and thus leave the injured party with a wholly inadequate recovery.

3846 The decision by this Court that a wilful plagiarist, who has been compensated fully for all his costs and expenses, may nevertheless retain 80% of the profits, is in a very real sense an invitation to the plagiarism of the successful stage successes since the only risk incurred is a possible obligation to pay for the cost of the material pirated at less than the established range of prices for such plays.

The plaintiffs should have the opportunity to try the issue which under the law as it existed (*Dam v. Kirk LaShelle*) was irrelevant and immaterial.

WHEREFORE, upon the foregoing grounds, it is respectfully urged that this Petition for a Rehearing be granted. Should this Court deem it necessary to afford the defend-

*Petition for Rehearing.*

ants herein an opportunity to be heard in opposition to 3847  
 plaintiffs' application herein for leave to adduce testimony  
 in rebuttal of the expert testimony presented by defend-  
 ants, it is respectfully requested that the issuance of the  
 mandate herein be stayed until the hearing and determi-  
 nation of a motion by the plaintiffs in this Court for the  
 said relief, which motion will be made returnable by plain-  
 tiffs on the first motion day of this Court on October 2,  
 1939.

Dated, New York, August 11, 1939.

Respectfully submitted,

3848

O'BRIEN, DRISCOLL & RAFTERY,  
 Attorneys for Complainants, Appellants  
 and Appellees,

Office and P. O. Address,  
 152 West 42nd Street,  
 Borough of Manhattan,  
 City of New York.

Of Counsel:

ARTHUR F. DRISCOLL,  
 BENJAMIN PEPPER,  
 T. NEWMAN LAWLER.

3849

STATE OF NEW YORK, )  
 COUNTY OF NEW YORK. ) ss.:

I, ARTHUR F. DRISCOLL, counsel for the above named  
 complainants, appellants and appellees, do hereby certify  
 that the foregoing Petition for a Rehearing in this action  
 is presented in good faith and not for delay.

ARTHUR F. DRISCOLL.

3850

**Denial.**

**UNITED STATES CIRCUIT COURT OF APPEALS,  
FOR THE SECOND CIRCUIT.**

---

**EDWARD SHELDON and MARGARET AYER BARNES,**  
Appellants,

—against—

**METRO-GOLDWYN PICTURES CORPORATION, METRO GOLDWYN-  
MAYER DISTRIBUTING CORPORATION, LOEW'S, INC., and  
CULVER EXPORT CORPORATION,**

•3851

Appellees.

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Before—**L. HAND, CHASE and PATTERSON,**

*Circuit Judges.*

**PER CURIAM:** Petition for rehearing denied.

*Circuit Judges.*

3852

**Order Denying Petition.**

3853

UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 5th day of September, one thousand nine hundred and thirty-nine.

Present—HON. LEARNED HAND,

“ HARRIE B. CHASE,

“ ROBERT P. PATTERSON, *Circuit Judges.*

3854

EDWARD SHELDON and MARGARET AYER BARNES,  
Plaintiffs-Appellants,

vs.

METRO-GOLDWYN PICTURES CORPORATION, et al.,  
Defendants-Appellants.

A petition for a rehearing having been filed herein by counsel for the plaintiffs;

Upon consideration thereof, it is

3855

Ordered that said petition be and hereby is denied.

D. E. ROBERTS,  
Clerk.



(Back)

UNITED STATES CIRCUIT COURT OF APPEALS,  
SECOND CIRCUIT.

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EDWARD SHELDON and another  
VS.

METRO-GOLDWYN PICTURES CORPORATION, et al.

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ORDER.

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United States Circuit Court of Appeals

Second Circuit

Filed Sep. 5, 1939

D. E. Roberts, Clerk.

**Order for Mandate.****UNITED STATES CIRCUIT COURT OF APPEALS, 3859****SECOND CIRCUIT.**

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 8th day of September, one thousand nine hundred and thirty-nine.

Present—HON. LEARNED HAND,

“ HARRIE B. CHASE,

“ ROBERT P. PATTERSON, *Circuit Judges.*

**3860**

EDWARD SHELDON and MARGARET AYER BARNES,  
Plaintiffs-Appellants,

VS.

METRO-GOLDWYN PICTURES CORPORATION, et al.,  
Defendants-Appellants.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel. **3861**

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is reversed with costs of the appeal to the plaintiffs, and cause remanded for further proceedings in accordance with the opinion of this Court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

D. E. ROBERTS,  
Clerk.

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3862

UNITED STATES CIRCUIT COURT OF APPEALS  
SECOND CIRCUIT.

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EDWARD SHELDON and MARGARET AYER BARNES

VS.

METRO-GOLDWYN PICTURES CORPORATION, et al.

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ORDER FOR MANDATE.

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3863

United States Circuit Court of Appeals

Second Circuit

Filed Sep. 8, 1939.

D. E. Roberts, Clerk.

3864

**Clerk's Certificate.**

3865

**UNITED STATES OF AMERICA,****SOUTHERN DISTRICT OF NEW YORK.**

I, **D. E. ROBERTS**, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 1280, inclusive in 2 volumes, contain a true and complete transcript of the record and proceedings had in said Court, in the case of

**EDWARD SHELDON and MARGARET AYER BARNES,****Plaintiffs-Appellants,**

3866

—against—

**METRO-GOLDWYN PICTURES CORPORATION, et al.,****Defendants-Appellants.**

as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this nineteenth day of September in the year of our Lord one thousand nine hundred and thirty-nine, and of the Independence of the said United States the one hundred and sixty-fourth.

3867

**D. E. ROBERTS,****Clerk.**

(Seal)

**Opinion of Circuit Court of Appeals in Prior Appeal  
on Issue of Infringement.**

3871

**UNITED STATES CIRCUIT COURT OF APPEALS,  
FOR THE SECOND CIRCUIT.**

No. 118—OCTOBER TERM, 1935.

Argued Nov. 13, 1935.

Decided Jan. 17, 1936.

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EDWARD SHELDON and MARGARET AYER BARNES,  
Appellants,

v.

METRO-GOLDWYN PICTURES CORPORATION, METRO-GOLDWYN  
DISTRIBUTING CORPORATION, LOEW'S INC. and CULVER  
EXPORT CORPORATION,

Appellees.

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Appeal from the District Court of the United States  
for the Southern District of New York.

Before—L. HAND, SWAN and CHASE, *Circuit Judges*.

Appeal by the plaintiffs from a decree of the District  
Court for the Southern District of New York dismissing  
a bill in equity for infringement of a copyright.

3873

ARTHUR F. DRISCOLL, of New York City, for appellants.

NATHAN BURKAN, of New York City, for appellees.

L. HAND, *Circuit Judge*:

The suit is to enjoin the performance of the picture  
play, "Letty Lynton", as an infringement of the plain-  
tiffs' copyrighted play, "Dishonored Lady". The plain-  
tiffs' title is conceded, so too the validity of the copyright;



*Opinion of Circuit Court of Appeals in Prior Appeal  
on Issue of Infringement.*

the only issue is infringement. The defendants say that they did not use the play in any way to produce the picture; the plaintiffs discredit this denial because of the negotiations between the parties for the purchase of rights in the play, and because the similarities between the two are too specific and detailed to have resulted from chance. The judge thought that, so far as the defendants had used the play, they had taken only what the law allowed, that is, those general themes, motives, or ideas in which there could be no copyright. Therefore he dismissed the bill.

An understanding of the issue involves some description of what was in the public domain, as well as of the play and the picture. In 1857 a Scotch girl, named Madeleine Smith, living in Glasgow, was brought to trial upon an indictment in three counts: two for attempts to poison her lover, a third for poisoning him. The jury acquitted her on the first count, and brought in a verdict of "Not Proven" on the second and third. The circumstances of the prosecution aroused much interest at the time not only in Scotland but in England; so much indeed that it became a cause célèbre, and that as late as 1927 the whole proceedings were published in book form. An outline of the story so published, which became the original of the play here in suit, is as follows: The Smiths were a respectable middle-class family, able to send their daughter to a "young ladies' boarding school"; they supposed her protected not only from any waywardness of her own, but from the wiles of seducers. In both they were mistaken, for when at the age of twenty-one she met a young Jerseyman of French blood, Emile L'Angelier, ten years older, and already the hero of many amorous adventures, she quickly succumbed and poured out her feelings in letters of the utmost ardor and indiscretion, and at times of a candor beyond the standards then, and even yet, permissible for a well-nurtured young woman. They wrote each other as though already married, he assuming to dic-

*Opinion of Circuit Court of Appeals in Prior Appeal  
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tate her conduct and even her feelings; both expected to marry, she on any terms, he with the approval of her family. Nevertheless she soon tired of him and engaged herself to a man some twenty years older who was a better match, but for whom she had no more than a friendly complaisance. L'Angelier was not, however, to be fobbed off so easily; he threatened to expose her to her father by showing her letters. She at first tried to disgnade him by appeals to their tender memories, but finding this useless and thinking herself otherwise undone, she affected a return of her former passion and invited him to visit her again. Whether he did, was the turning point of the trial: the evidence, though it really left the issue in no doubt, was too indirect to satisfy the jury, perhaps in part because of her advocate's argument that to kill him only insured the discovery of her letters. It was shown that she had several times bought or tried to buy poison,—prussic acid and arsenic,—and that twice before his death L'Angelier became violently ill, the second time on the day after her purchase. He died of arsenical poison, which the prosecution charged that she had given him in a cup of chocolate. At her trial, Madeleine being incompetent, as a witness, her advocate proved an alibi by the testimony of her younger sister that early on the night of the murder as laid in the indictment, she had gone to bed with Madeleine, who had slept with her throughout the night. As to one of the attempts her betrothed swore that she had been with him at the theatre.

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This was the story which the plaintiffs used to build their play. As will appear they took from it but the merest skeleton, the acquittal of a wanton young woman, who to extricate herself from an amour that stood in the way of a respectable marriage, poisoned her lover. The incidents, the characters, the mis en scène, the sequence of events, were all changed; nobody disputes that the plaintiffs were entitled to their copyright. All that they took

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from the story they might probably have taken, had it even been copyrighted. Their heroine is named Madeleine Cary; she lives in New York, brought up in affluence, if not in luxury; she is intelligent, voluptuous, ardent and corrupt; but, though she has had a succession of amours, she is capable of genuine affection. Her lover and victim is an Argentinian, named Moreno, who makes his living as a dancer in night-clubs. Madeleine has met him once in Europe before the play opens, has danced with him, has excited his concupiscence, he presses presents upon her. The play opens in his rooms, he and his dancing partner who is also his mistress, are together; Madeleine on the telephone recalls herself to him and says she wishes to visit him, though it is already past midnight. He disposes of his mistress by a device which does not deceive her and receives Madeleine; at once he falls to wooing her, luring her among other devices by singing a Gaucho song. He finds her facile and the curtain falls in season.

The second act is in her home, and introduces her father, a bibulous dotard, who has shot his wife's lover in the long past; Laurence Brennan, a self-made man in the fifties, untutored, self-reliant and reliable, who has had with Madeleine a relation, half-paternal, half-amorous since she grew up; and Denis Farnborough, a young British labor peer, a mannekin to delight the heart of well ordered young women. Madeleine loves him; he loves Madeleine; she will give him no chance to declare himself, remembering her mottled past and his supposedly immaculate standards. She confides to Brennan, who makes clear to her the imbecility of her self-denial; she accepts this enlightenment and engages herself to her high-minded paragon after confessing vaguely her evil life and being assured that to post-war generations all such lapses are peccadillo.

In the next act Moreno, who has got wind of the engagement, comes to her house, disposing of Farnborough, who

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chances to be there, she admits Moreno, acknowledges that she is to marry Farnborough, and asks him to accept the situation as the normal outcome of their intrigue. He refuses to be cast off, high words pass, he threatens to expose their relations, she raves at him, until finally he knocks her down and commands her to go to his apartment that morning as before. After he leaves full of swagger, her eye lights on a bottle of strychnine which her father uses as a drug; her fingers slowly close upon it; the audience understands that she will kill Moreno. Farnborough is at the telephone; this apparently stiffens her resolve, showing her the heights she may reach by its execution.

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The scene then shifts again to Moreno's apartment; his mistress must again be put out, most unwillingly for she is aware of the situation; Madeleine comes in; she pretends once more to feel warmly, she must wheedle him for he is out of sorts after the quarrel. Meanwhile she prepares to poison him by putting the strychnine in coffee, which she asks him to make ready. But in the course of these preparations during which he sings her again his Gaucho song, what with their proximity, and this and that, her animal ardors are once more aroused and drag her unwillingly and protesting, from her purpose. The play must therefore wait for an hour or more until, relieved of her passion, she appears from his bedroom and while breakfasting puts the strychnine in his coffee. He soon discovers what has happened and tries to telephone for help. He does succeed in getting a few words through, but she tears away the wire and fills his dying ears with her hatred and disgust. She then carefully wipes away all traces of her finger prints and manages to get away while the door is being pounded in by those who have come at his call.

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The next act is again at her home on the following evening. Things are going well with her and Farnborough and her father, when a district attorney comes in, a familiar of the household, now in stern mood; Moreno's mistress and



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a waiter having incriminated Madeleine, and a cross has been found in Moreno's pocket, which he superstitiously took off her neck the night before. The district attorney cross-questions her, during which Farnborough several times fatuously intervenes; she is driven from point to point almost to an avowal when as a desperate plunge she says she spent the night with Brennan. Brennan is brought to the house and, catching the situation after a moment's delay, bears her out. This puts off the district attorney until seeing strychnine brought to relieve the father, his suspicions spring up again and he arrests Madeleine. The rest of the play is of no consequence here, except that it appears in the last scene that at the trial where she is acquitted, her father on the witness stand accounts for the absence of the bottle of strychnine which had been used to poison Moreno.

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At about the time that this play was being written an English woman named Lowndes wrote a book called Letty Lynton, also founded on the story of Madeleine Smith. Letty Lynton lives in England; she is eighteen years old, beautiful, well-reared and intelligent, but wayward. She has had a more or less equivocal love affair with a young Scot, named McLean, who worked in her father's chemical factory, but has discarded him, apparently before their love-making had gone very far. Then she chances upon a young Swede—half English—named Ekebon, and their acquaintance quickly becomes a standardized amour, kept secret from her parents, especially her mother, who is an uncompromising moralist, and somewhat estranged from Letty anyway. She and her lover use an old barn as their place of assignation; it had been fitted up as a play house for Letty when she was a child. Like Madeleine Smith she had written her lover a series of indiscreet letters which he has kept, for though he is on pleasure bent Ekebon has a frugal mind, and means to marry his sweetheart and set himself up for life. They are betrothed and he keeps pressing her to declare it to her parents, which she means never

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to do. While he is away in Sweden Letty meets an unmarried peer considerably older than she, poor, but intelligent and charming; he falls in love with her and she accepts him, more because it is a good match than for any other reason, though she likes him well enough, and will make him suppose that she loves him.

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Thereupon Ekebon reappears, learns of Letty's new betrothal, and threatens to disclose his own to her father, backing up his story with her letters. She must at once disown her peer and resume her engagement with him. His motive, like L'Angelier's, is ambition rather than love, though conquest is a flattery and Letty a charming morsel. His threats naturally throw Letty into dismay; she has come to loathe him and at any cost must get free, but she has no one to turn to. In her plight she thinks of her old suitor, McLean, and goes to the factory only to find him gone. He has taught her how to get access to poisons in his office and has told of their effect on human beings. At first she thinks of jumping out the window, and when she winces at that, of poisoning herself; that would be easier. So she selects arsenic which is less painful and goes away with it; it is only when she gets home that she thinks of poisoning Ekebon. Her mind is soon made up, however, and she makes an appointment with him at the barn; she has told her father, she writes, and Ekebon is to see him on Monday, but meanwhile on Sunday they will meet secretly once more. She has prepared to go on a weekend party and conceals her car near the barn. He comes; she welcomes him with a pretence of her former ardors, and tries to get back her letters. Unsuccessful in this she persuades him to drink a cup of chocolate into which she puts the arsenic. After carefully washing the pans and cups, she leaves with him, dropping him from her car near his home; he being still unaffected. On her way to her party she pretends to have broken down and by asking the help of a passing cyclist establishes an alibi. Ekebon dies at his

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home attended by his mistress; the letters are discovered and Letty is brought before the coroner's inquest and acquitted chiefly through the alibi, for things look very bad for her until the cyclist appears.

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The defendants, who are engaged in producing speaking films on a very large scale in Hollywood, California, had seen the play and wished to get the rights. They found, however, an obstacle in an association of motion picture producers presided over by Mr. Will Hays, who thought the play obscene; not being able to overcome his objections, they returned the copy of the manuscript which they had had. That was in the spring of 1930, but in the autumn they induced the plaintiffs to get up a scenario, which they hoped might pass moral muster. Although this did not suit them after the plaintiffs prepared it they must still have thought in the spring of 1931 that they could satisfy Mr. Hays, for they then procured an offer from the plaintiffs to sell their rights for \$30,000. These negotiations also proved abortive because the play continued to be objectionable, and eventually they cried off on the bargain. Mrs. Lowndes' novel was suggested to Thalberg, one of the vice-presidents of the Metro-Goldwyn Company, in July, 1931, and again in the following November, and he bought the rights to it in December. At once he assigned the preparation of a play to

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Stromberg, who had read the novel in January, and thought it would make a suitable play for an actress named Crawford, just then not employed. Stromberg chose Meehan, Tuckey and Brown to help him, the first two with the scenario, the third with the dramatic production. All these four were examined by deposition; all denied that they had used the play in any way whatever; all agreed that they had based the picture on the story of Madeleine Smith and on the novel, "Letty Lynton". All had seen the play, and Tuckey had read the manuscript, as had Thalberg, but Stromberg, Meehan and Brown swore that they had not; Stromberg's denial being however worthless, for he had

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originally sworn the contrary in an affidavit. They all say that work began late in November or early in December, 1931, and the picture was finished by the end of March. To meet these denials, the plaintiffs appeal to the substantial identity between passages in the picture and those parts of the play which are original with them.

The picture opens in Montevideo where Letty Lynton is recovering from her fondness for Emile Renaul. She is rich, luxurious and fatherless, her father having been killed by his mistress's husband; her mother is seared, hard, selfish, unmotherly; and Letty has left home to escape her, wandering about in search of excitement. Apparently for the good part of a year she has been carrying on a love affair with Renaul; twice before she has tried to shake loose, has gone once to Rio where she lit another flame, but each time she has weakened and been drawn back. Though not fully declared as an amour, there can be no real question as to the character of her attachment. She at length determines really to break loose, but once again her senses are too much for her and it is indicated, if not declared, that she spends the night with Renaul. Though he is left a vague figure only indistinctly associated with South America somewhere or other, the part was cast for an actor with a marked foreign accent, and it is plain that he was meant to be understood, in origin anyway, as South American, like Moreno in the play. He is violent, possessive and sensual; his power over Letty lies in his strong animal attractions. However, she escapes in the morning while he is asleep, whether from his bed or not is perhaps uncertain; and with a wax figure in the form of a loyal maid,—Letty in the novel had one,—boards a steamer for New York. On board she meets Darrow, a young American, the son of a rich rubber manufacturer, who is coming back from a trip to Africa. They fall in love, upon the faintest provocation and become betrothed before the ship docks, three weeks after she left Monte-

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video. At the pier she finds Renaul who has flown up to reclaim her. She must in some way keep her two suitors apart, and she manages to dismiss Darrow and then to escape Renaul by asking him to pay her customs duties, which he does. Arrived home her mother gives her a cold welcome and refuses to concern herself with the girl's betrothal. Renaul is announced; he has read of the betrothal in the papers and is furious. He tries again to stir her sensuality by the familiar gambit, but this time he fails; she slaps his face and declares that she hates him. He commands her to come to his apartment that evening; she begs him to part with her and let her have her life; he insists on renewing their affair. She threatens to call the police; he rejoins that if so her letters will be published, and then he leaves. Desperate, she chances on a bottle of strychnine, which we are to suppose is an accoutrement of every affluent household, and seizes it; the implication is an intended suicide, not murder. Then she calls Darrow, tells him that she will not leave with him that night for his parents' place in the Adirondacks as they had planned; she renews to him the pledge of her love, without him she cannot live, an intimation to the audience of her purpose to kill herself.

That evening she goes to Renaul's apartment in a hotel armed with her strychnine bottle, for use on the spot; she finds him cooling champagne, but in bad temper. His caresses which he bestows plentifully enough, again stir her disgust not her passions, but he does not believe it and assumes that she will spend the night with him. Finding that he will not return the letters, she believes herself lost and empties the strychnine into a wine glass. Again he embraces her; she vilifies him; he knocks her down; she vilifies him again. Ignorant of the poison he grasps her glass, and she, perceiving it, lets him drink. He woos her again, this time with more apparent success, for she is terrified; he sings a Gaucho song to her, the



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same one that has been heard at Montevideo. The poison begins to work and, at length supposing that she has meant to murder him, he reaches for the telephone; she forestalls him, but she does not tear out the wire. As he slowly dies, she stands over him and vituperates him. A waiter enters; she steps behind a curtain; he leaves thinking Renaul drunk; she comes out, wipes off all traces of her fingerprints and goes out, leaving however her rubbers which Renaul had taken from her when she entered.

Next she and Darrow are found at his parents' in the Adirondicks; while there a detective appears, arrests Letty and takes her to New York; she is charged with the murder of Renaul; Darrow goes back to New York with her. The finish is at the district attorney's office; Letty and Darrow, Letty's mother, the wax serving maid are all there. The letters appear incriminating to an elderly rather benevolent district attorney; also the customs slip and the rubbers. Letty begins to break down; she admits that she went to Renaul's room, not to kill him but to get him to release her. Darrow sees that that story will not pass, and volunteers that she came to his room at a hotel and spent the night with him. Letty confirms this and mother, till then silent, backs up their story; she had traced them to the hotel and saw the lights go out, having ineffectually tried to dissuade them. The maid still further confirms them and the district attorney, not sorry to be discomfited, though unbelieving, discharges Letty.

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We are to remember that it makes no difference how far the play was anticipated by works in the public domain which the plaintiffs did not use. The defendants appear not to recognize this, for they have filled the record with earlier instances of the same dramatic incidents and devices, as though, like a patent, a copyrighted work must be not only original, but new. That is not however the law as is obvious in the case of maps or compendia, where later works will necessarily be anticipated. At times, in

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as an inevitable consequence of past conduct, itself not evil enough to quench pity. It is the essence of the authors' expression, the very voice with which they speak.

We have often decided that a play may be pirated without using the dialogue. *Daly v. Palmer*, Fed. Cas. No. 3,552, 6 Blatch. 256; *Daly v. Webster*, 56 F. 483, 486, 487; *Dam v. Kerke La Shelle Co.*, 175 F. 902, 907, 41 L. R. A. (N. S.) 1002, 20 Am. Cas. 1173; *Chappell & Co. v. Fields*, 210 F. 864; *Dymore v. Bottom*, 11 F. (2d) 690, and *Nichols v. Universal Pictures Corporation*, *supra*, 45 F. (2d) 119, do not suggest otherwise. Were it not so, there could be no piracy of a pantomime, where there cannot be any dialogue; yet nobody would deny to pantomime the name of drama. Speech is only a small part of a dramatist's means of expression; he draws on all the arts and compounds his play from words and gestures and scenery and costume and from the very looks of the actors themselves. Again and again a play may lapse into pantomime at its most poignant and significant moments; a nod, a movement of the hand, a pause, may tell the audience more than words could tell. To be sure, not all this is always copyrighted, though there is no reason why it may not be, for those decisions do not forbid which hold that mere scenic tricks will not be protected. *Serrana v. Jefferson* (C. C.), 33 F. 347; *Barnes v. Miner* (C. C.), 122 F. 480; *Bloom et al. v. Nixon* (C. C.), 125 F. 977. The play is the sequence of the confluent of all these means, bound together in an inseparable unity; it may often be most effectively pirated by leaving out the speech, for which a substitute can be found, which keeps the whole dramatic meaning. That as it appears to us is exactly what the defendants have done here; the dramatic significance of the scenes we have recited is the same, almost to the letter. True, much of the picture owes nothing to the play; some of it is plainly drawn from the novel; but that is entirely immaterial; it is enough that substantial parts were lifted.

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no plagiarist can excuse the wrong by showing how much of his work he did not pirate. We cannot avoid the conviction that, if the picture was not an infringement of the play, there can be none short of taking the dialogue.

The decree will be reversed and an injunction will go against the picture together with a decree for damages and an accounting. The plaintiffs will be awarded an attorney's fee in this court and in the court below, both to be fixed by the District Court upon the final decree.

Decree reserved.

A true copy.

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D. E. ROBERTS,  
Clerk.  
(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 4, 1939.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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discussing how much of the substance of a play the copy-  
right protects, courts have indeed used language which  
seems to give countenance to the notion that, if a plot  
were old, it could not be copyrighted. *London v. Biograph*  
*Co.* (C. C. A.), 231 F. 696; *Eichel v. Marcus* (D. C.),  
241 F. 404. But we understand by this no more than  
that in its broader outline a plot is never copyrightable,  
for it is plain beyond peradventure that anticipation as  
such cannot invalidate a copyright. Borrowed the work  
must indeed not be, for a plagiarist is not himself pre-  
tando an "author"; but if by some magic a man who had  
never known it, were to compose a new Keats's Ode on a  
Grecian Urn, he would be an "author", and if he copy-  
righted it, others might not copy that poem, though they  
might of course copy Keats's. *Bleistein v. Donaldson*  
*Lithographing Co.*, 188 F. S. 239, 249, 23 S. Ct. 298, 47  
L. Ed. 460; *Gerlach-Barklow Co. v. Morris & Bendien,*  
*Inc.*, 23 F. (2d) 159, 161 (C. C. A. 2); Weil, Copyright  
Law, page 234. But though a copyright is for this reason  
less vulnerable than a patent, the owner's protection is  
more limited, for just as he is no less an "author" be-  
cause others have preceded him, so another who follows  
him is not a tortfeasor unless he pirates his work.  
*Jewellers' Circular Publishing Co. v. Keystone Co.*, 281  
F. 83, 92, 26 A. L. R. 571 (C. C. A. 2); *General Drafting*  
*Co. v. Andrews*, 37 F. (2d) 54, 56 (C. C. A. 2); *Williams*  
*v. Smythe* (C. C.), 410 F. 961; *American, etc., Directory*  
*Co. v. Gehring Pub. Co.* (D. C.), 4 F. (2d) 415; *New*  
*Jersey, etc., Co. v. Barton Business Service* (D. C.), 57  
F. (2d) 353. If the copyrighted work is therefore original,  
the public demesne is important only on the issue of in-  
fringement; that is, so far as it may break the force of  
the inference to be drawn from likenesses between the  
work and the putative piracy. If the defendant has had  
access to other material which would have served him  
as well, his disclaimer becomes more plausible.

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In the case at bar there are then two questions: First, whether the defendants actually used the play; second, if so, whether theirs was a "fair use". The judge did not make any finding upon the first question, as we said at the outset, because he thought the defendants were in any case justified; in this following our decision in *Nichols v. Universal Pictures Corporation*, 45 F. (2d) 119. The plaintiffs challenge that opinion because we said that "copying" might at times be a "fair use"; but it is convenient to define such a use by saying that others may "copy" the "theme", or "ideas", or the like, of a work, though not its "expression". At any rate so long as it is clear what is meant, no harm is done. In the case at bar the distinction is not so important as usual, because so much of the play was borrowed from the story of Madeleine Smith, and the plaintiffs' originality is necessarily limited to the variants they introduced. Nevertheless, it is still true that their whole contribution may not be protected; for the defendants were entitled to use, not only all that had gone before, but even the plaintiffs' contribution itself, if they drew from it only the more general patterns; that is, if they kept clear of its "expression". We must therefore state in detail those similarities which seem to us to pass the limits of "fair use". Finally, in concluding as we do that the defendants used the play pro tanto, we need not charge their witnesses with perjury. With so many sources before them they might quite honestly forget what they took; nobody knows the origin of his inventions; memory and fancy merge even in adults. Yet unconscious plagiarism is actionable quite as much as deliberate. *Buck v. Jewell-LaSalle Realty Co.*, 283 U. S. 191, 198, 51 S. Ct. 410, 75 L. Ed. 971, 76 A. L. R. 1266; *Harold Lloyd Corporation v. Witwer*, 65 F. (2d) 1, 16 (C. C. A. 9); *Fred Fisher, Inc. v. Dillingham* (D. C.), 298 F. 145.

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The defendants took for their *mis en scène* the same city and the same social class; and they chose a South



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American villain. The heroines had indeed to be wanton, but Letty Lynton "tracked" Madeleine Cary more closely than that. She is overcome by passion in the first part of the picture and yields after announcing that she hates Renaud and has made up her mind to leave him. This is the same weakness as in the murder scene of the play, though transposed. Each heroine's waywardness is suggested as an inherited disposition; each has had an errant parent involved in scandal; one killed, the other becoming an outcast. Each is redeemed by a higher love. Madeleine Cary must not be misread; it is true that her lust overcomes her at the critical moment, but it does not extinguish her love for Farnborough; her body, not her soul, consents to her lapse. Moreover, her later avowal, which she knew would finally lose her her lover, is meant to show the basic rectitude of her nature. Though it does not need Darlow to cure Letty of her wanton ways, she too is redeemed by a nobler love. Neither Madeleine Smith, nor the Letty of the novel, were at all like that; they wished to shake off a clandestine intrigue to set themselves up in the world; their love as distinct from their lust, was pallid. So much for the similarity in character.

Coming to the parallelism of incident, the threat scene is carried out with almost exactly the same sequence of event and actuation; it has no prototype in either story or novel. Neither Ekebon nor L'Angelier went to his fatal interview to break up the new betrothal; he was beguiled by the pretence of a renewed affection. Moreno and Renaud each goes to his sweetheart's home to detach her from her new love; when he is there, she appeals to his better side, unsuccessfully; she abuses him; he returns the abuse and commands her to come to his rooms; she pretends to agree, expecting to finish with him one way or another. True, the assault is deferred in the picture from this scene to the next, but it is the same dramatic trick. Again, the poison in each case is found at home, and the girl talks

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with her betrothed just after the villain has left and again pledges him her faith. Surely the sequence of these details is pro tanto the very web of the authors' dramatic expression; and copying them is not "fair use".

The death scene follows the play even more closely; the girl goes to the villain's room as he directs; from the outset he is plainly to be poisoned while they are together. (The defendants deny that this is apparent in the picture, but we cannot agree. It would have been an impossible dénouement on the screen for the heroine, just plighted to the hero, to kill herself in desperation, because the villain has successfully enmeshed her in their mutual past; yet the poison is surely to be used on someone.) Moreno and Renaul each tries to arouse the girl by the memory of their former love, using among other aphrodisiacs the Gaucho song; each dies while she is there, incidentally of strychnine not arsenic. In extremis each makes for the telephone and is thwarted by the girl; as he dies, she pours upon him her rage and loathing. When he is dead, she follows the same ritual to eradicate all traces of her presence, but forgets tell-tale bits of property. Again these details in the same sequence embody more than the "ideas" of the play; they are its very raiment.

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Finally in both play and picture in place of a trial, as in the story and the novel, there is substituted an examination by a district attorney; and this examination is again in parallel almost step by step. A parent is present; so is the lover; the girl yields progressively as the evidence accumulates; in the picture, the customs slip, the rubbers and the letters; in the play, the cross and the witnesses, brought in to confront her. She is at the breaking point when she is saved by substantially the same most unexpected alibi; a man declares that she has spent the night with him. That alibi there introduced is the turning point in each drama and alone prevents its ending in accordance with the classic canon of tragedy; i. e., fate

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